(22,371.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 750.

WILLIAM G. PLESTED AND CHARLES BEUCHAT, APPELLANTS,

vs.

SAMUEL A. ABBEY AND JOHN J. LAMBERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 14, 1910.

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1 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered, that heretofore, and on, to-wit, the twenty-sixth day of September, A. D. 1910, came William G. Plested and Charles Beuchat by Jesse G. Northcutt, Esquire, A. W. McHendrie, Esquire, and Robert H. Widdicombe, Esquire, their solicitors and filed in said court their bill of complaint; and sued out of and under the seal of said court a subpœna in chancery against Samuel A. Abbey, and John J. Lambert,

And the said bill of complaint is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court.

In Equity.

WILLIAM G. PLESTED and CHARLES BEUCHAT, Complainants,
vs.
SAMUEL A. ABBEY and JOHN J. LAMBERT, Defendants.

To the Honorable the Judges of the Circuit Court of the United States of America in and for the District of Colorado:

William G. Plested and Charles Beuchat, citizens of the United States and the state of Colorado, residents of Las Animas County, said state, bring this bill of complaint against Samuel A. Abbey and John J. Lambert, both resident citizens of the city of
2 Pueblo, county of Pueblo, and state of Colorado, and thereupon state:

First. The matter in controversy herein, exclusive of interest and costs, exceeds in value the sum of two thousand dollars, and arises under the laws of the United States.

Second. Defendant Samuel A. Abbey is, and at all times hereinafter mentioned was, the duly appointed and acting register of the local land office in and for the Pueblo, Colorado, land district. That the defendant John J. Lambert is, and at all times hereinafter mentioned was, the duly appointed and acting receiver of the said local land office in and for the Pueblo, Colorado, land district. That the said officers, and each of them, were appointed and are acting under and by virtue of the laws of the United States in said behalf provided, and are officers and agents of the United States Government.

Third. Your orators are, and each of them is and was at all times hereinafter mentioned, above the age of twenty-one years, is and was at such times a citizen of the United States, and your said orators

and each of them are, and at all times hereinafter mentioned were, duly qualified and authorized to avail themselves of the right to enter vacant coal lands of the United States under and by virtue of the laws thereof and as designated by the revised statutes, section 2347, and were and are entitled to the rights therein and thereby granted.

3 Fourth. That on the 23rd day of March, A. D. 1907, your orators being thereunto duly authorized, entered into and upon and took possession of the following described land, situate, lying and being in the county of Las Animas and state of Colorado, to-wit, lots 1, 2, 3 and 4, section 8, and lots 3 and 4, section 9, Tp. 34 S. R. 65 west of the 6th P. M., containing in all two hundred and forty, (240), acres, and then and there discovered and began the development and improvement on said premises of certain coal measures thereon and therein located and existing, and thereafter from time to time continued such development and improvement of a substantial character and opened a coal mine on said premises, and in and about their said improvements and developments expended large sums of money, to-wit, money in excess of five hundred dollars, ($500.00). That the said lands at the time of said entry were surveyed, were vacant coal lands and ever since said date have remained vacant and unoccupied save for the entry and occupancy of your orators and constitute and at the time of said entry did constitute a part of the public domain of the United States. That said lands did not, nor do they now, contain within the limits thereof any valuable vein or lode of quartz, or any other rock in place, bearing gold, silver, or copper, nor was their, nor is there now, within the limits thereof any valuable deposits of gold, silver or copper, but the said lands were and are chiefly valuable for coal.

4 Fifth. That within sixty days thereafter, to wit, on April 12th, 1907, your orators filed in the local land office of the United States at Pueblo, Colorado, their statement in writing commonly known and referred to as a coal declaratory statement, wherein and whereby they set forth in the manner and according to the form required and prescribed by the rules and regulations of the Interior Department all that they had done in and about and pertaining to their entry in and upon the lands hereinabove described, their improvements thereupon, their qualifications and under the law as claimants to and entrymen upon said lands and then and thereby set forth and declared their intention to claim said lands under and by virtue of the law of the United States.

Sixth. That thereafter and on, to-wit, July 1st, 1907, your orator tendered to defendant Lambert as receiver of the said local land office at Pueblo, Colorado, the sum of twenty dollars, ($20.00) per acre for said lands, being a total of four thousand, eight hundred dollars ($4800.00), and being the statutory price fixed by law for lands of the character hereinabove described and located as said lands are, and then and there made their application in writing to the defendant Abbey, Register of said land office, to enter said land as in such cases provided by law, and sought to consummate

and complete their entry thereof and to obtain a receipt for their money so tendered, commonly known and designated as a
5 final receipt, or duplicate *re*-receiver's receipt, and which is received and regarded as the equivalent of a certificate of entry constituting evidence of interest in lands and as an evidence of the entryman's right to a patent therefor. That at the time of making the said application for the final entry of said lands, your orators had done and caused to be done all things of them required by law and by the rules and regulations of the Interior Department to be done to entitle them to enter the said lands and receive a patent therefor. That said lands were at said time vacant public lands and subject to the entry of your orators so as aforesaid made of the same. That there then and there and upon said occasion remained and existed no act, question, consideration or determination of a judicial character or discretionary nature for the said defendants to do, but their duty in the premises was of purely a naked ministerial character.

Seventh. That thereafter, to-wit, January 11, 1908, both the declaratory statement and the application of your orators so as aforesaid made, were rejected by the local officers for the alleged reason that the entire township in which the said lands are located had been theretofore withdrawn from disposition under the coal land laws.

Eighth. That thereafter, your orators caused to be filed and prosecuted an appeal from the action of the said local land officers rejecting their said coal declaratory statement and application
6 to purchase, which said appeal was thereafter and on, to-wit, the 30th day of March, 1908, duly considered by the commissioner of the General Land Office, to which said forum the said appeal was prosecuted, and by the said commissioner of the general land office the action of the local officers was affirmed and the said declaratory statement and the said application to purchase by the said judgment of affirmance were rejected upon the said alleged ground that the records of the said general land office disclosed that the said lands so involved in the said application were withdrawn from disposition under the coal land laws by departmental order of July 26, 1906. That within due time thereafter your orators caused the said decision of the said commissioner of the general land office to be reviewed by the secretary of the interior, in which said review the said secretary of the interior on January 30th, 1909, duly adjudicated the matters therein involved and by his decision therein affirmed the action of the said general land office and the said local land office, in rejecting the applications as hereinbefore set forth.

Ninth. Your orators aver that the said departmental order of July 26th, 1906, was illegal and without authority of law and void, and that the said application of your orators should have been received, their money as aforesaid tendered accepted, and the final receipt issued therefor.

Tenth. That such proceedings were thereafter had and done in and through the department of the interior and by order and
7 direction of the officers of said department thereunto authorized and directed, that said lands so claimed by your orators,

as well as other lands in the township in which the same are situated, were duly classified and designated on the books and records of the department as coal lands and were thereafter, to-wit, during the month of June, 1910, by order of the interior department restored to entry and your orators were by letter under date of June 28, 1910, from the local land office, over the signature of the defendant Abbey, acting as register of the said land office, advised of such order and of the price which the said department has assumed to place on the said lands, and further advised that your orators would be allowed sixty days from the receipt of the said letter in which to assert formal claim to the said lands in accordance with the coal land laws and regulations. That a copy of said letter is hereto attached marked "Exhibit A" and made a part hereof.

Eleventh. That your orators have held the possession of said lands and claimed the right to enter the same continuously since their entry thereupon to wit, March 23, 1907. That thereafter and after the receipt of the said letter of June 28, 1910, and on to-wit, the 22nd day of July, 1910, your orators filed in the local land office at Pueblo, Colorado, their written application duly verified for the purchase of said lands under and in accordance with the provisions of section 2347 of the revised statutes of the United States and in accordance with the rules and regulations and upon the forms prescribed by the interior department in such cases. That
8 said application was in all respects regular and legal. A copy of said application is hereto attached marked "Exhibit B" and made a part hereof.

Twelfth. That your orators were thereafter, to-wit, July 26th, 1910, advised by the register of said local land office, to publish a notice of said application and post copies thereof on the lands sought to be purchased, which said notices were furnished by the said local land office and delivered to your orators. That attached hereto marked "Exhibit C" is a copy of the letter of the said local land office transmitting said notices. That your orators caused said notices so by said local land office transmitted to them to be published in the paper designated by said office, to-wit, The Trinidad Chronicle News, and caused the same as directed by said office to be posted on the premises and there to remain during the entire period of publication and up to the time of the application to purchase said lands as hereinafter mentioned. Hereto attached marked "Exhibit D" is a copy of the said notice. That thereafter, to-wit, on the 6th day of September, 1910, there was transmitted from the publisher of said notice by the proper officer or manager of the paper publishing said notice to the said local land office, due proof of the publication thereof in all respects as required by law. And on the 9th day of September, 1910, your orators caused to be filed with the said local land office proof of the posting of the said notice, a copy of
9 which said proof is hereto attached marked "Exhibit E."

Thirteenth. Your orators further state that by reason of the contention generally and notoriously made by the interior department through its officers and agents, that the coal lands constituting a part of the public domain were being classified as to

character and values and that prices in excess of those fixed by statute would be claimed and demanded from purchasers of said lands and by reason of the letter of June 28th, 1910, a copy of which is "Exhibit A" hereto attached, they were advised, expected and feared that the said local land office would demand from your orators when they should attempt and did attempt as hereinafter mentioned to complete the purchase of their said lands, the payment of a sum of money largely in excess of the price fixed by statute for such lands; and for the purpose of greater accuracy and of being more fully advised as to the intention of the department, addressed a letter to the said local land officers defendants herein, during the early part of the month of September, wherein they sought from said officers information as to the price which would be demanded of them for said lands, and in response thereto were advised by letters of September 9th and 10th, 1910, copies of which letters are hereto attached and marked "Exhibits F and G" and made a part hereof, that they, the said officers would demand from your orators for the purchase of the said lands prices as follows: That for lots 1, 2, 3, and 4, section 8, township 34 south of range 65 west, the
10 price of one hundred and twenty-five dollars ($125.00), per acre; that for lot 3, section 9, one hundred and fifteen dollars, ($115.00), per acre; lot 4, section 9, one hundred and thirty-five dollars ($135.00) per acre; or a total for the said two hundred and forty acres of thirty thousand dollars, ($30,000.00), and advising your orators that they would be allowed thirty days from date of receipt of said letter in which to deliver the said amount in currency to the said land office, and in the event they failed so to do that their said application would be rejected.

Fourteenth. Your orators further aver that the lands herein involved and hereinabove described are located within fifteen miles of a completed railroad. That the price fixed and determined for the said lands and of lands of the character of those herein involved and located within fifteen miles from a completed railroad, is twenty dollars ($20.00), per acre. And your orators are by statute declared to "have the right to enter any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding * * * three hundred and twenty acres * * * upon payment to the receiver of not less than * * * twenty dollars per acre", where such lands are situated within fifteen miles of a completed railroad. That the said lands are, and at all times herein mentioned were, unappropriated lands, (except as appropriated by your orators), and have not been reserved by competent authority or any authority thereunto authorized by law.

11 Fifteenth. Your orators are informed and believe and so charge the fact to be, that the defendants claim and pretend as their excuse for demanding the said thirty thousand dollars, ($30,000.00), from your orators on their application to purchase the said land, that they have been ordered and directed by their superior officers, to-wit the secretary of the interior and commissioner of the general land office, to fix and place said price upon said lands and

to demand said payment of said sum of thirty thousand dollars ($30,000.00), therefor as a condition to the right to enter the same and the right to purchase the same.

Sixteenth. That the rights of your orators and the action herein as well as the claim and contention of the defendants herein, involves a construction of the statutes of the United States, to-wit, section 2347 of the Revised Statutes thereof. That said defendants, as well as their superior officers, claim and pretend and for about four years last past have so claimed and pretended that the said statute did not fix a definite and certain price for the sale of coal lands belonging to the United States but that merely a minimum price was fixed, and that they, the said officers of the interior department, were clothed with the inherent power by virtue of their offices, to fix and determine any price above the alleged minimum price of ten and twenty dollars per acre for lands which were known to be chiefly valuable for coal. That the said officers in pur-
12 suance of their claim and in pursuance of their theory of their duties and the duty of the interior department relative to the administration of the affairs of said department, and in and about the conservation of the assets and wealth of the Government and particularly the coal lands thereof, have conceived it to be their duty to take such steps and declare such values and exact prices or compensation as will deter applicants from the attempted purchase of coal lands or prohibit all save the wealthy from making such purchase. That in pursuance of their ideas and fixed policy of preventing entries of coal land as heretofore made and as has obtained since the act of March 3, 1873, of which the section hereinabove referred to is a part, they, the said officers of the said department, together with the defendants herein, have caused to be prepared, adopted and promulgated various rules, regulations and declarations of policy, wherein and whereby they have among other things declared, that "it has been deemed necessary", (meaning it has been deemed by the said department), "to place such a price on coal land as to make it unprofitable for private citizens to take up government coal land simply to hold it for future mining."

That the said price of twenty dollars per acre is a definite and certain price fixed by statute. That the said defendants have not, nor have their superiors, any authority in law, nor are they vested with any power to fix any price of any kind or character on the coal lands of the United States, or any part thereof, nor on the
13 lands sought to be purchased by your orators. That their attempt so to do and the order promulgated assuming and pretending to fix the price on the lands of your orators herein is an unlawful, wrongful and arbitrary assumption of authority, is void and illegal, and the attempt of these defendants to comply with and carry out the said order is arbitrary and unlawful and constitutes a wrong upon the rights of your orators and an irreparable injury, for the redress of which they have no adequate remedy at law.

Seventeenth. That heretofore, to-wit, on the 22nd day of September, 1910, your orators having done and caused to be done all things precedent to and leading up to the purchase of the said lands,

and the said lands having been reported open by the chief of the field division operating in the said district, and having been within the parlance of the land office, "clear listed", your orators applied to the said register of the land office, defendant Abbey, to purchase the said lands. That it then and there became and was the duty of the said Abbey to certify to the defendant Lambert, receiver of said land office, that the said lands were clear listed and to certify the statutory price of twenty dollars per acre to the said receiver, upon the doing of which and the presentation to the said receiver of the said certificate, and the tender of the statutory price of twenty dollars per acre for said lands, it would become the duty of the said receiver to receive from your orators the said sum of twenty
14 dollars per acre, being a total of four thousand, eight hundred dollars ($4,800.00), for said lands, and to issue to your orators his duplicate receipt therefor. But your orators aver that the said defendant Abbey wrongfully and unlawfully failed and refused, and still so wrongfully and unlawfully refuses to so certify the proceedings in said behalf as by law required. That your orators nevertheless on the said day, tendered in lawful money of the United States, the said four thousand, eight hundred dollars, ($4,800.00), to the said receiver, the defendant Lambert herein, and then and there requested and demanded of the said Lambert that he receive the same and to give your orators the duplicate receipt required by law and the regulations of the land department therefor, but the said Lambert, receiver, and defendant herein, then and there wrongfully and unlawfully failed and refused to receive the said money or any part thereof, or to give any receipt therefor, and still so fails and refuses. That at the time of the tender of said money and the application to enter said lands, all things necessary and required of your orators to entitle them to so enter said lands and receive the final receipt therefor, had been done and completed in full compliance with the laws of the United States and the lawful rules and regulations of the department of the interior pertaining thereto, and there remained for the defendants herein no juridicial consideration or determination, and no consideration involving the exercise of judicial or official discretion; that their duties in the premises
15 were purely ministerial; that the rights of your orators were then and there complete and it was the naked ministerial duty of the defendant Abbey to receive said application and of the defendant Lambert to receive said money so tendered and issue his final receipt therefor.

Eighteenth. Your orators further aver that the said defendants, and each of them, avow and give out and declare, their intention to continue in their refusal to permit the entry of said lands by your orators or to permit the purchase thereof, or to receive the statutory price therefor, but declare and avow their intention to demand of and exact from your orators as a condition precedent to their right to purchase said lands or to issue a receipt therefor, the exorbitant sum of thirty thousand dollars, ($30,000.00). That said sum is twenty five thousand, two hundred dollars ($25,200.00), in excess of the sum which they have a right by law to demand from your

orators. Your orators further aver that the said defendants admit that your orators have done all things and have paid all fees necessary and by law or regulation required to entitle them to purchase the said lands and have tendered the said four thousand, eight hundred dollars ($4,800.00), as the price thereof, but refuse to permit the said purchase upon the sole ground that they have the right to demand, and allege that it is their duty to demand, the full sum of thirty thousand dollars ($30,000.00). Your orators further aver that the said defendants declare their intention to reject the application of your orators and declare the said lands and all
16 thereof subject to entry by any other qualified person, unless your orators pay the said thirty thousand dollars, ($30,000), on or before the 13th day of October, A. D. 1910. And your orators aver that the said defendants will, if not restrained and enjoined by the order of this court, continue in their refusal to comply with the law in that behalf and that they will, unless so restrained, declare the said lands open for entry and that other persons, relying upon the action of the said officers and believing that they have the right to enter said lands, will attempt to enter in and upon the same and appropriate them to their own use, and will attempt to purchase the same, and will thereby become antagonistic claimants of said lands to your orators, by reason whereof your orators will be involved in numerous suits at law and in equity for the protection of their rights in and to the said lands.

That if your orators are prevented from completing their said entry as heretofore made; they will be forever deprived of the value of their labor and expenditures on said lands, and deprived of their property without that due process of law guaranteed to them by the constitution and laws of the United States.

Wherefore your orators most humbly pray that this honorable court will allow and cause to be issued its most gracious writ of injunction herein directing and requiring that the said defendants, and each of them, their attorneys, agents, servants, employees, and each of them, be forever restrained and enjoined from carry-
17 ing out or attempting, assuming or pretending to carry out and enforce the various orders, rules or directions, whereby they are commanded or directed to exact or require of or from your orators the said sum of thirty thousand dollars ($30,000.), as a condition to the entry of said lands, or any sum of money whatever over and above the said sum of four thousand, eight hundred dollars ($4,800.00), and the legal fees prescribed by law in such cases made and provided; that the said defendant Abbey be required to accept the application of your orators heretofore made for the entry of the said lands; that he be required to certify to the defendant Lambert, receiver of said land office, the statutory prices heretofore fixed and determined by Congress for such lands, and that he, the said receiver, be required and enjoined to receive and accept the said sum of four thousand, eight hundred dollars ($4,800.00), in full payment and compensation for the said lands and to issue his duplicate receipt therefor.

And that the said defendants and each of them, their attorneys,

agents, servants and employees, be restrained and enjoined from declaring the said lands hereinabove described, open or subject to entry by any other person or person-, or association of persons, and taht they be restrained from receiving or accepting the application of any person or persons for the entry of said lands or any part thereof.

And that your orators may be awarded such other and further relief in the premises as to equity and good conscience may
18 seem meet and proper.

JESSE G. NORTHCUTT,
Of Trinidad, Colorado;
A. W. McHENDRIE,
Of Trinidad, Colorado;
ROBERT H. WIDDICOMBE,
Cooper Building, Denver, Colo.,
Solicitors for Complainants.

STATE OF COLORADO,
City and County of Denver, ss:

William G. Plested, of lawful age, being duly sworn, on oath says that he is one of the complainants in the above entitled cause; that he has read the foregoing bill of complaint, knows the contents, thereof, and states that the matters and things therein alleged and averred are true, except those matters therein alleged on information and belief and those he believes to be true.

WILLIAM G. PLESTED.

Subscribed in my presence and sworn to before me this 23rd day of September, A. D. 1910.

CLAUDE D. THOMAS,
[NOTARIAL SEAL.] *Notary Public.*

EXHIBIT "A."

Department of the Interior.

United States Land Office.

PUEBLO, COLORADO, *June* 28, 1910.

Charles Beuchat and William G. Plested, c/o Dugan &
19 Brayton, Pueblo, Colorado.

SIRS: In the matter of the notice of claim filed by your in this office on April 18, 1908, asserting claim to the lots 3, 4, Sec. 9; lots 1, 2, 3, 4, Sec. 8, T. 34 S., R. 65 W., you are now advised that this office is this day in receipt of classification, prices, etc., of the land above described, the price fixed by the U. S. Geological Survey being one hundred twenty-five dollars per acre for lots 1, 2, 3, 4, of section 8, one hundred thirty-five for lot 4, of sec. 9, and one hundred fifteen for lot 3, section 9.

You will be allowed sixty days from receipt hereof in which to

assert formal claim to the above land in accordance with the coal land laws and regulations.

Respectfully,

S. A. ABBEY, *Register.*

R. A. P.

EXHIBIT "B."

Department of the Interior,

United States Land Office.

Coal Land Application, Act March 3, 1873, Sec. 2347.

PUEBLO, COLORADO, —— —, 1910.

We, William C. Plested and Charles Beuchat, hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, to purchase lots 1, 2, 3, 4, sec. 8; lots 3, 4, Sec. 9, Twp. 34 S. R. 65 W. 6th P. M. in the district of lands subject to sale at the land office at Pueblo, Colorado, and containing two hundred and forty acres; and we do solemnly swear that no portion of said tract is in the possession of any other party or parties who has or have commenced improvements thereon for the development of coal; that we, and each of us, are twenty-one years of age; citizens of the United States, and have never held, or purchased any lands under said act, either as an individual or as a member of an association; that we make this application in good faith for our own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and we do further swear that we are well acquainted with the character of said described lands, and with each and every legal subdivision thereof; that our knowledge of said land is such as to enable us to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not to our knowledge within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver or copper, and that there is not within the limits of said land, to our knowledge, any valuable deposits of gold, silver, or copper, So help us God.

WILLIAM G. PLESTED.
CHARLES BEUCHAT.

STATE OF COLORADO,
Las Animas County:

I, J. W. Hawley, clerk of the county court in and for Las Animas County, Colorado, do hereby certify that the foregoing application and affidavit were read by the affiants in my presence before said affiants affixed their signatures thereto; that said affiants are to me personally known and that I verily believe qualified persons and the persons they represent themselves to be; that the application and affidavit *was* duly subscribed and sworn to before me by said

parties, each for himself and not one for the other, at my office in the city of Trinidad, Las Animas County, Colorado, this 22nd day of July, A. D. 1910.

[SEAL.] J. W. HAWLEY,
Clerk of the County Court of Las Animas County, Colorado.

EXHIBIT "C."

Department of the Interior,

United States Land Office.

PUEBLO, COLORADO, *July* 26, 1910.

21 William G. Plested and Charles Beuchat, c/o Wm. G. Plested, Trinidad, Colo.

GENTLEMEN: Referring to your application to purchase coal lands under Section 2347 R. S., for the lots 1, 2, 3, 4, Section 8; lots 3 and 4, section 9, township 34 S., range 65 W., inclosed herewith are notices of publication to be posted on the land and published in the Trinidad Chronicle News for the required period of thirty days.

Respectfully,

S. A. ABBEY, *Register.*

C. A. M.

Incs.

EXHIBIT "D."

Notice for Publication.

Coal Entry (Sec. 2347, R. S.).

United States Land Office.

PUEBLO, COLORADO, *July* 25, 1910.

Notice is hereby given that William G. Plested and Charles Beuchat of Trinidad, Las Animas County, Colorado, have this day filed in this office their application to purchase, under the provisions of section 2347, U. S. Revised Statutes, lots 1, 2, 3, 4, Sec. 8; and lots 3, 4, Sec. 9, T'w'p 34 S. R. 65 W. 6th P. M.

Any and all persons claiming adversely the lands described or desiring to object for any reason to the sale thereof to the applicants, should file their affidavits of protest in this office on or before the 5th day of September, 1910, otherwise the application may be allowed.

S. A. ABBEY,
Register.

EXHIBIT "E."

Department of the Interior,

United States Land Office,

Pueblo, Colorado.

Affidavit of Posting Notice.

STATE OF COLORADO,
Las Animas County, ss:

Wm. G. Plested of lawful age being first duly sworn upon oath deposes and says; that on the 28th day of July A. D. 1910, he posted upon the land embraced in the coal entry of William G.
22 Plested and Charles Beuchat, embracing lots 3 and 4 Sec. 9; and lots 1, 2, 3, 4 Sec. 8, T'w'p 34 S. R. 65 W. 6th P. M. a true copy of the notice of publication issued by the register of the Pueblo, Colorado, land office a copy of which was published in the Chronicle-News by the direction of said register, and that said copy so posted on said land by me as aforesaid, remained posted thereon in a conspicuous place, from said 28th day of July, 1910, to the 5th day of September, 1910, and is now posted thereon.

WM. G. PLESTED.

Subscribed and sworn to before me this 9th day of September, A. D. 1910.

[SEAL.] J. W. HAWLEY,
Clerk County Court of Las Animas County, Colorado.

EXHIBIT "F."

Department of the Interior,

United States Land Office.

PUEBLO, COLO., *Sept.* 9, 1910.

William G. Plested and Charles Beuchat, Trinidad, Colo.:

SIR: With reference to the coal application to purchase, 011044, filed by you on July 25, 1910, you are advised that lots 1, 2, 3, 4, Sec. 8, T. 34 S., R. 65 W., are classified at $125 per acre; lot 3, Sec. 9, at $115, per acre; and lot 4, Sec. 9, at $135 per acre, making a total for the 240 acres of thirty thousand dollars ($30,000).

You will be allowed thirty days from date of receipt hereof in which to deliver this purchase money in currency to this office, failing in which your application will be rejected.

You should also file within this time proof of the continuous posting of the notice on the land during the time of publication.

Respectfully,

S. A. ABBEY, *Register.*
J. J. LAMBERT, *Receiver.*

R. A. P.

23 EXHIBIT "G."

Department of the Interior,

United States Land Office.

PUEBLO, COLO., *Sept.* 12, 1910.

W. G. Plested, Trinidad, Colo.

SIR: In answer to your letter of the 10th instant relative to the price of the land to be purchased by you as coal land, you are advised that the notice sent you on the 10th inst. was mailed you in accordance with instructions received from the general land office in circular of April 24, 1907, and such other and later instructions as have been received. The statute, it is noted upon perusal, states that the land shall be disposed of at *not less than* $20 per acre, but no maximum is given. To clear your mind of an apparent doubt, it is stated that this classification to you was made by letter "N" of the General Land Office of June 25, 1910, and this office cannot, therefore, give heed to your letter of the 10th.

This claim has been clear listed by the chief field division, and, if all is regular, will pass to final entry upon receipt of the money mentioned in our letter of the 10th instant.

Respectfully,

S. A. ABBEY, *Register.*

R. A. P.

(Endorsed:) 5595. In the Circuit Court. William G. Plested and Charles Beauchat, Complainants, vs. Samuel A. Abbey and John J. Lambert, Defendants. In Equity. Bill of Complaint. Filed Sep. 26, 1910. Charles W. Bishop, Jesse G. Northcutt, Trinidad, Colo., A. W. McHendrie, Trinidad, Colo., Robt. H. Widdicombe, Cooper Bldg., Denver, Colo., Solicitors for complainants.

24 UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

The President of the United States of America to Samuel A. Abbey and John J. Lambert, Greeting:

You and each of you are hereby commanded, that you appear before the judges of the circuit court of the United States, for the

district of Colorado, at the city and county of Denver, in said district, on the first Monday in November next, (it being the 7th day of November, A. D. 1910) to answer the bill of complaint of William G. Plested and Charles Beuchat, this day filed in the office of the clerk of said court, in said city and county of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the Marshal of the District of Colorado to execute and make due return.

Witness, The Honorable John M. Harlan, Associate Justice of the United States, and the seal of the said circuit court, at the city and county of Denver aforesaid, this twenty-sixth day of September in the year of our Lord one thousand nine hundred and ten and of the independence of the United States, the 135th year.

CHARLES W. BISHOP, *Clerk.*
25 By ALBERT TREGO,
Deputy Clerk.

[Seal U. S. Cir. Court.]

Memorandum.

The above named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city and county of Denver aforesaid, on or before the day to which the above writ is returnable, the bill of complaint will be taken against them as confessed, and a decree entered accordingly.

CHARLES W. BISHOP, *Clerk.*
By ALBERT TREGO, *Deputy Clerk.*

(Endorsed:) No. 5595. United States Circuit Court, for the district of Colorado. In Chancery. William G. Plested and Charles Beuchat vs. Samuel A. Abbey and John J. Lambert, Subpœna. Returnable to rule day, first Monday in November, A. D. 1910. Charles W. Bishop, Clerk. Northcutt and McHendrie, Robert H. Widdicombe. Filed Oct. 8, 1910. Charles W. Bishop, Clerk.

THURSDAY, *September 29th, A. D.* 1910.

At Chambers before the Honorable Robert E. Lewis, District Judge, the following proceedings were had:

In Chancery.

5595.

WILLIAM G. PLESTED et al.
vs.
SAMUEL A. ABBEY et al.

Bill for an Injunction and for Other Relief.

At this day comes Thomas Ward, Junior, Esquire, a solicitor of this court, and files and enters herein his appearance, and
26 the appearance of George W. Wickersham, Esquire, Attorney General of the United States, and Ernest Knaebel, Esquire, Assistant Attorney General of the United States, as solicitors for and on behalf of the respondents.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court.

No. 5595. In Equity.

WILLIAM G. PLESTED and CHARLES BEUCHAT, Complainants,
vs.
SAMUEL A. ABBEY and JOHN J. LAMBERT, Defendants.

The Demurrer of Samuel A. Abbey and John J. Lambert to the Bill of Complaint of William G. Plested and Charles Beuchat, the Above-named Complainants.

These defendants, by protestation, not confessing or acknowledging all, or any of the matters and things in the said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:

1. That the complainants are not entitled to the relief they pray for in said bill, because they, at all times since January 30, 1909, have had and now have a plain, complete and adequate remedy at law.

2. That said so called bill of complaint in substance and effect is an application in law for a writ of mandamus and does not
27 contain any matters entitling the same to the consideration of a court of equity.

3. That the cause before this court, entitled a bill in equity, is an application for mandamus and that this court is without jurisdiction to issue a writ of mandamus against said defendants as register and receiver, respectively, of the land office of the United States.

4. That it appears by said bill of complaint that the secretary of

the interior of the United States on January 30, 1909, on appeal, sustained the action of defendants as register and receiver, respectively, relative to the entry attempted in 1907 by said complainants of the lands described in said bill; and that the said secretary of the interior is a necessary party in this action; but that the complainants have not made the secretary of the interior a party defendant herein.

5. That it appears from said bill of complaint that on July 22, 1910, complainants made an affidavit *at* purchase for the purchase of coal lands of the United States described in said bill of complaint and that said matter of the purchase of said lands by complainants is still pending before the register and receiver named in said bill and that no appeal has been taken to the commissioner of the general land office or to the secretary of the interior in the matter concerning which complaint is made against the defendants
28 herein; and that therefore said bill was prematurely brought and complainants herein are not entitled to any relief whatsoever from this court in this cause.

6. That the bill of complaint herein does not state any matter of equity entitling the complainants to the relief prayed for, nor are the facts, as stated, sufficient to entitle complainants to any relief against these defendants or either of them.

7. That this court is wholly without jurisdiction to grant in whole or in part the relief prayed or any relief whatsoever upon the state of facts in the bill alleged.

Wherefore, these defendants, respectively, demand the judgment of this Honorable Court, whether they shall be compelled to make any further, or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

GEO. W. WICKERSHAM,
Attorney General,
ERNEST KNAEBEL,
THOMAS WARD, JR.,
Solicitors for Defendants.

ETHELBERT WARD,
Ass't Dist. Att'y.

I, Thomas Ward, Jr., solicitor for the defendants in the above cause, do hereby certify that the foregoing demurrer, in my opinion, is well founded in law.

THOMAS WARD, JR.,
Solicitor for Defendants.

29 I, S. A. Abbey, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer is not interposed for delay.

S. A. ABBEY, *Register.*

Subscribed and sworn to before me this 30th day of Sept. A. D. 1910.

My commission expires November 20, 1910.

[NOTARIAL SEAL.] JOSEPH DYE,
Notary Public.

(Endorsed:) No. 5595. United States circuit court, district of Colorado. William C. Plested and Charles Beuchat, Complainants, v. Samuel A. Abbey, and John J. Lambert, Defendants. In Equity. Demurrer of Samuel A. Abbey and John J. Lambert to the Bill of Complaint of William G. Plested and Charles Beuchat, the above named complainants. Filed Oct. 1, 1910, Charles W. Bishop, Clerk. Geo. W. Wickersham, Ernest Knaebel, Ethelbert Ward, Thomas Ward, Jr., U. S. Attorney. Solicitors for defendants.

Sixty-ninth Day, May Term, Saturday, October 1st, A. D. 1910.

Present: The Honorable Willis Van Devanter, Circuit Judge, and the Honorable Robert E. Lewis, District Judge, and other officers as noted on the third day of May, A. D. 1910.

In Chancery.

5595.

WILLIAM G. PLESTED and CHARLES BEUCHAT
vs.
SAMUEL A. ABBEY and JOHN J. LAMBERT.

Bill for Injunction and for Other Relief.

This cause comes on now to be heard on the demurrer to
30 the bill of complaint herein, and is argued by counsel, Jesse G. Northcutt, Esquire, appearing as solicitor for the complainants, and Ernest Knaebel, Esquire assistant to the Attorney General, and Ethelbert Ward, Esquire, assistant district attorney, appearing as solicitors for the respondents;

And thereupon, on consideration thereof, it is ordered by the court that the said demurrer be, and the same is hereby, sustained.

And thereupon, the complainants elect to stand upon their bill of complaint herein.

Wherefore, it is ordered, adjudged, and decreed by the court that the bill of complaint herein be, and the same is hereby, dismissed out of this court at the costs of the complainants, to be taxed.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court.

No. —.

WILLIAM G. PLESTED and CHARLES BEUCHAT, Complainants,
vs.
SAMUEL A. ABBEY and JOHN J. LAMBERT, Defendants.

Application for Appeal.

The above named complainants, William G. Plested and Charles Beuchat knowing themselves aggrieved by the judgment of the court

heretofore, to-wit, on the 1st day of October, A. D. 1910 entered in the above entitled cause, do hereby appeal from said judgment to the Supreme Court of the United States, and pray that this appeal may be allowed, that a transcript of the records, proceedings
31 and papers upon which the said judgment was entered, duly authenticated, may be sent to the Supreme Court of the United States.

ROBERT H. WIDDICOMBE,
Cooper Building, Denver, Colorado;
A. W. McHENDRIE,
JESSE G. NORTHCUTT,
Of Trinidad, Colorado, Solicitors for Complainants.

(Endorsed:) No. 5595. In the circuit court. William G. Plested and Charles Beuchat, Complainants, vs. Samuel A. Abbey and John J. Lambert Defendants. Application for Appeal. Filed Oct. 7, 1910, Charles W. Bishop, Clerk.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court.

No. —.

WILLIAM G. PLESTED and CHARLES BEUCHAT, Complainants,
vs.
SAMUEL A. ABBEY and JOHN J. LAMBERT, Defendants.

Assignment of Errors.

Now come the complainants and allege that there is manifest error to the prejudice of the said complainants in the record, trial and judgment of the court in the above entitled cause, and assign as grounds of error, the following to-wit:

First. The court erred in sustaining the demurrer of defendants filed to the complaint of complainants in said cause.

32 Second. In rendering judgment dismissing the complainants' bill of complaint herein.

Third. In rendering judgment in favor of the defendants and against the complainants herein.

Wherefore, complainants pray that the record proceedings therein be reviewed and that the said judgment be reversed and held for naught.

ROBERT H. WIDDICOMBE,
Cooper Building, Denver, Colorado;
A. W. McHENDRIE,
JESSE G. NORTHCUTT,
Of Trinidad, Colorado, Solicitors for Complainants.

(Endorsed:) No. 5595. In the Circuit Court. William G. Plested and Charles Beuchat, Complainants vs. Samuel A. Abbey and John J. Lambert, Defendants. Assignment of Errors. Filed Oct. 7, 1910, Charles W. Bishop, Clerk.

FRIDAY, *October 7th*, 1910.

At Chambers, before the Honorable Robert E. Lewis, District Judge, the following proceedings were had.

In Chancery.

5595.

WILLIAM G. PLESTED and CHARLES BEUCHAT
vs.
SAMUEL A. ABBEY and JOHN J. LAMBERT.

Bill for Injunction and for Other Relief.

And now, to-wit, on this 7th day of October, 1910, it is ordered that the appeal be allowed as above prayed.

It is further ordered that as a condition to said appeal, appellants file herein an appeal bond conditioned according to law, and in the sum of five hundred dollars ($500), with sureties thereon.

33 Know all men by these Presents, That we, William G. Plested and Charles Beuchat, as principals, and John Tarabino and Eli Jeffryes, as sureties, of the county of Las Animas and state of Colorado, are held and firmly bound unto Samuel A. Abbey and John J. Lambert in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally firmly, by these presents. Sealed with our seals, and dated at Trinidad, Colorado this 6th day of October in the year of our Lord one thousand nine hundred ten.

The condition of the above obligation is such, that whereas the said Samuel A. Abbey and John J. Lambert did, on the 1st day of October one thousand nine hundred ten at a term of the United States circuit court then being holden within and for the district of Colorado in the city of Denver and state of Colorado, obtain a judgment against the above bounden, William G. Plested and Charles Beuchat, dismissing the complaint of the said William G. Plested and Charles Beuchat and costs of suit from which said judgment the said William G. Plested and Charles Beuchat have prayed for and obtained an appeal to Supreme Court of the United States.

Now if the said William G. Plested and Charles Beuchat shall duly prosecute said appeal, and shall morever pay to the appellees all costs and damages that shall be adjudged to the appellees
34 on the appeal, and also that the appellants will satisfy and perform the judgment or order appealed from, and pay said judgment, costs and interest in case it shall be affirmed, and any judgment or order which the Supreme Court of the United States may render or order to be rendered by the inferior court, not exceeding in amount or value the original judgment, or order, and all rents or damages to property during the pending of the appeal, out

of the possession of which the appellees *is* kept by reason of the appeal, then this obligation to be null and void; otherwise to remain in full force and virtue.

WILLIAM G. PLESTED. [SEAL.]
CHARLES BEUCHAT. [SEAL.]
JOHN TARABINO. [SEAL.]
ELI JEFFRYES.

Approved.
ROBT. E. LEWIS,
District Judge.

Justification of Surety.

STATE OF COLORADO,
Las Animas County:

Personally appeared this day before me John Tarabino of Trinidad of the County and state aforesaid, one of the sureties on the bond of William G. Plested and Charles Beuchat, who, being duly sworn, deposes and says that he is seized and possessed in his own right, over and above all his just debts and liabilities, in property not exempt by law from levy and sale under execution, of a clear, unincumbered estate of the value of five hundred dollars, within
35 the jurisdiction of this state.

JOHN TARABINO.

Subscribed and sworn to before me, this 6th day of October A. D. 1910. My commission expires May 3, 1914.
[NOTARIAL SEAL.] BOWDRY FLOYD,
Notary Public.

STATE OF COLORADO,
Las Animas County:

Personally appeared this day before me Eli Jeffryes of Trinidad of the county and state aforesaid, one of the sureties on the bond of William G. Plested and Charles Beuchat who, being duly sworn, deposes and says that he is seized and possessed in his own right, over and above all his just debts and liabilities, in property not exempt by law from levy and sale under execution, of a clear, unincumbered estate of the value of five hundred dollars within the jurisdiction of this state.

ELI JEFFRYES.

Subscribed and sworn to before me, this 6th day of October, A. D. 1910. My commission expires May 3, 1914.
[NOTARIAL SEAL.] BOWDRY FLOYD,
Notary Public.

(Endorsed:) 5595. Appeal Bond $500.00. United States Circuit Court of the district of Colorado. William G. Plested and Charles Beuchat vs. Samuel A. Abbey and John J. Lambert Filed Oct. 7, 1910, Charles W. Bishop, Clerk.

36 UNITED STATES OF AMERICA,
Eighth Judicial Circuit, ss:

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

The United States of America to Samuel A. Abbey and John J. Lambert:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, District of Columbia, within thirty days from and after the day this citation bears date, pursuant to an appeal allowed by the Circuit Court of the United States for the District of Colorado, sitting at Denver, wherein William G. Plested and Charles Beuchat are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Robert E. Lewis, Judge of the District Court of the United States for the District of Colorado, and *ex officio* Judge of the Circuit Court of the United States for the District of Colorado, at Denver, in said District, this Seventh day of October, A. D., 1910.

ROBT. E. LEWIS, *Judge.*

Service of the above citation is hereby accepted, this 7th day of October, 1910.

THOMAS WARD JR.,
United States Attorney for the District of Colorado.

R.H.W./M/10/7/10.

[Endorsed:] 5595. In the United States Circuit Court of Appeals for the Eighth Circuit. William G. Plested and Charles Beuchat, appellants, vs. Samuel A. Abbey and John J. Lambert, appellees. Citation on Appeal. (Original). Filed Oct. 7, 1910. Charles W. Bishop, Clerk.

37 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to thirty-five (35) both inclusive, to be a true, perfect, and complete transcript and copy of the record, petition for appeal, assignment of errors, bond on appeal, and all proceedings in the cause heretofore filed or entered of record in said court and in a certain cause lately in said court pending wherein William G. Plested and Charles Beuchat were complainants and Samuel A. Abbey and John J. Lambert were respondents, as fully and completely as the same still remain on file and of record in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at the City and County of Denver in said district, this twentieth day of October, A. D. 1910.

[Seal United States Circuit Court, District of Colorado.]

CHARLES W. BISHOP, *Clerk*,
By ALBERT TREGO, *Deputy Clerk*.

38 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered, that heretofore, and on, to-wit, the twenty-fifth day of October, A. D. 1910, in a certain cause in said court pending wherein William G. Plested and Charles Beuchat were complainants, and Samuel A. Abbey and John J. Lambert were respondents, there was filed a certain certificate.

And said certificate is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the District of Colorado.

In Equity. No. 5595.

WILLIAM G. PLESTED and CHARLES BEUCHAT, Complainants,
v.
SAMUEL A. ABBEY and JOHN J. LAMBERT, Defendants.

At the request of the complainants above named, we hereby certify that the decree of this court rendered on October 1, 1910, in the above entitled cause, wherein the demurrer of the defendants to the bill of complaint of the complainants was sustained and said bill of complaint dismissed, was given and rendered upon the ground that a ruling or decision by the officers of a local land office
39 of the United States made in the usual course of proceedings for the acquisition of the title to public lands is not subject to review or correction in the courts while the title to the lands remains in the United States, and also upon the further ground that while the title to public lands remains in the United States and the proceedings for acquiring that title are still in fieri, the courts are without power, by injunction or otherwise, to control the judgment and discretion of the officers of the land department in respect of the disposal of such lands under the public land laws.

Witness the hands of the Judges presiding at the hearing of said cause and participating in the decree rendered therein, as above stated.

Dated October 8, 1910.

WILLIS VAN DEVANTER,
Circuit Judge.
ROBERT E. LEWIS, *District Judge*.

(Endorsed:) 5595. U. S. Circuit Court, district of Colorado. William G. Plested et al. vs. Samuel A. Abbey et al. Certificate as to Jurisdiction. Filed Oct. 25, 1910. Charles W. Bishop, Clerk.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and
40 copy of a certain certificate, heretofore filed in said court, and in a certain cause lately in said court pending wherein William G. Plested and Charles Beuchat were complainants, and Samuel A. Abbey and John J. Lambert were respondents, as fully and completely as the same still remains on file in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at the city and county of Denver in said district, this twenty-sixth day of October, A. D. 1910.

[Seal United States Circuit Court, District of Colorado.]

CHARLES W. BISHOP, *Clerk*,
By —— —— *Deputy Clerk*.

Endorsed on cover: File No. 22,371. Colorado C. C. U. S. Term No. 750. William G. Plested and Charles Beuchat, appellants, vs. Samuel A. Abbey and John J. Lambert. Filed October 31st, 1910. File No. 22,371.

Office Supreme Court, U. S.
FILED.
OCT 6 1911
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911

WILLIAM G. PLESTED, *et al.*,
Appellants,
vs.
SAMUEL A. ABBEY, *et al.*,
Appellees.

No. 456.

MOTION TO ADVANCE

Now come the appellants, by Robert H. Widdicombe, A. Watson McHendrie, Jessle G. Northcutt and William C. Prentiss, their attorneys, and move the Court to advance this cause for hearing, and for cause show:

This is a proceeding in equity to enjoin the Register and Receiver at Pueblo, Colorado, from obeying certain orders of the Commissioner of the General Land Office and Secretary of the Interior directing them to demand a price in excess of the price fixed by the public coal land law for certain coal lands for which the appellants made application under said coal land law, and from declaring the said land open or subject to entry by any other person or persons or receiving or accepting the application of any other person or persons for entry of said land.

This form of proceeding was upon the authority of American School of Magnetic Healing vs. McAnnulty, 187 U. S., 94, and raises the question of the validity of the action of the Land Department in attempting to withdraw coal land from entry and fixing the purchase price thereof

at a figure in excess of the price fixed by the coal land law, and issuing to the local officers orders in pursuance thereof.

The defendants demurred upon the ground that the complainants have a plain, complete and adequate remedy at law; that the bill in substance and effect is an application for a writ of mandamus and that the Court is without jurisdiction to issue a writ of mandamus against the defendants as Register and Receiver; that the Secretary of the Interior having sustained the action of the defendants is a necessary party; that the matter of the purchase of said lands by the complainants is still pending before the defendants and no appeal has been taken, and that therefore the suit was prematurely brought; that the bill does not state matters entitling the complainants to relief; and that the Court is wholly without jurisdiction in the premises.

This demurrer was sustained by the Circuit Court, which certified that the ground of its decision was that a ruling or decision by the officers of a local land office is not subject to review or correction in the courts while the title remains in the United States, and upon the further ground that while the title remains in the United States and the proceedings for acquiring that title are *in fieri*, the courts are without power to control the judgment and discretion of the officers of the Land Department.

The issues involved in the appeal are, therefore, the jurisdiction of the courts to grant relief, the construction and operation of the coal land law and the power and authority of the Secretary of the Interior to control the Register and Receiver in the performance of their proper duty under that law, all of which questions are of vital and far-reaching importance at this time.

The coal land law has existed upon the statute books since March 3, 1873, and many rights have incepted there-

under and are based upon the proper construction thereof heretofore and until very recently recognized and followed by the Land Department.

The said statute is the only law under which title to Government land containing coal in merchantable quantities and quality can be obtained.

Many hundreds of thousands of acres of public domain contain valuable coal deposits and many persons are desirous of acquiring title thereto, and would so acquire title, develop the property and introduce it in the coal market, if the proper construction and operation of said statute were settled and placed at rest. Many persons are applying for such lands, claiming the right to purchase them at the statutory price, some of which applications the Land Department has attempted to reject and others are pending undisposed of. Other persons have been coerced to pay the increased price attempted to be placed on said lands by the Land Department and feel themselves aggrieved and wronged, and the exaction of such increased prices will lead to a multiplicity of suits unless the question be set at rest by an early decision by this Court.

The question of jurisdiction presented and passed upon by the court below is of great public interest at this time, inasmuch as the form of proceeding resorted to by the appellants herein, if sustained by this Court, is the only manner in which applicants for coal land injured by the action of the Land Department can have relief, for under the decisions of this Court no relief can be granted in direct proceedings against the Secretary of the Interior, and it is of extreme importance to the public generally and the Land Department, as well, that such jurisdictional question be speedily settled.

If jurisdiction be sustained, a final and controlling decision upon the validity of the innovation attempted by

the Land Department in disposing of the public lands will follow, and if applicants are without a forum in which to test the validity of the action of the Land Department, it is equally important that such fact should be speedily determined in order that the public may be relieved from the present oppressive uncertainty.

It is, therefore, essential to the proper and lawful operation of the coal land law that the Land Department and the general public may be accorded at the earliest possible date the enlightenment to be afforded by the decision of this Honorable Court.

Respectfully submitted,

ROBERT H. WIDDICOMBE,
A. WATSON McHENDRIE,
JESSE G. NORTHCUTT,
WILLIAM C. PRENTISS,
Attorneys for Appellants.

Honorable Solicitor General of the United States:

Please take notice that at the opening of the October term, 1911, or so soon thereafter as counsel can be heard, we shall submit the foregoing motion.

ROBERT H. WIDDICOMBE,
A. WATSON McHENDRIE,
JESSE G. NORTHCUTT,
WILLIAM C. PRENTISS,
Attorneys for Appellants.

Service of a copy of the foregoing motion and notice acknowledged this day of , 1911.

[redacted]

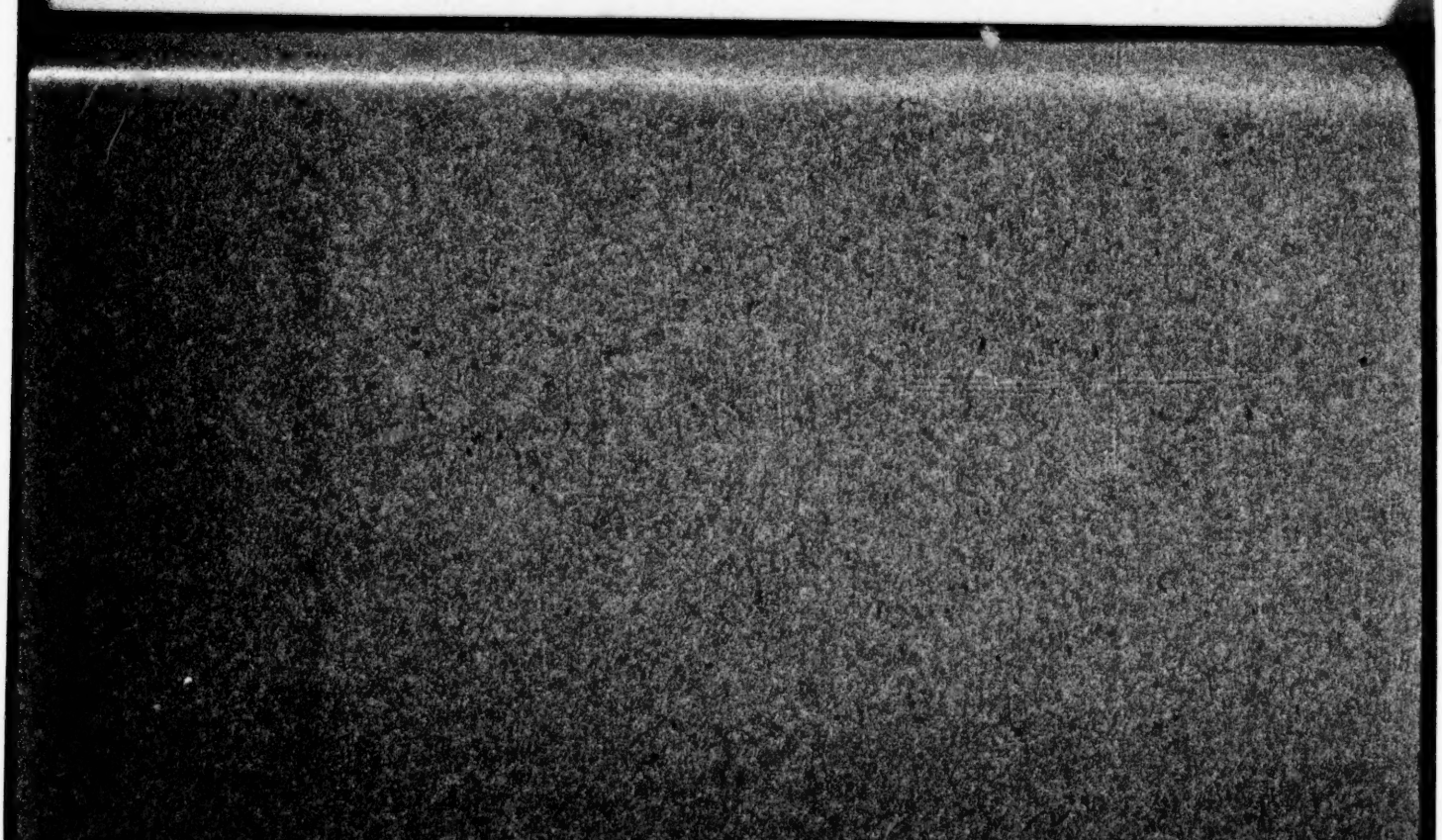
No. [redacted]156.

WILLIAM G. PRENTISS AND CHARLES PRENTISS,
Appellants,
vs.
SAMUEL E. ABBEY AND JOHN J. LAMBERT,
Appellees.

BRIEF AND ARGUMENT OF APPELLANTS.

ROBERT H. WIDDICOMBE,
A. WATSON McKENDREE,
JESSE O. NORTHCUTT,
CLARK, PRENTISS & CLARK,
Solicitors for Appellants.

[redacted]



(22,371.)

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 750.

WILLIAM G. PLESTED AND CHARLES BEUCHAT,
APPELLANTS,

vs.

SAMUEL A. ABBEY AND JOHN J. LAMBERT,
APPELLEES.

BRIEF AND ARGUMENT OF APPELLANTS.

STATEMENT OF FACTS.

This action was instituted by the appellants, plaintiffs below, in the Circuit Court of the United States in and for the District of Colorado, by Bill of Complaint filed on the 26th day of September, 1910.

The bill charges that the matter in controversy, exclusive of interest and cost, exceeds in value the sum of Two Thousand Dollars and arises under the

laws of the United States. That the appellees are officers of the United States, being respectively Register and Receiver of the United States Local Land Office in the Pueblo, Colorado, Land District. That the appellants are, and at all times in the bill mentioned were, qualified entrymen under the Coal Land laws of the United States. That on the 28th day of March, 1907, they went upon the lands in the complaint described, took possession thereof, discovered and disclosed a coal measure thereon, improved and developed the same, and expended thereon money in excess of Five Hundred Dollars.

That within sixty days after so taking possession and making improvements they filed their coal declaratory statement, as by statute provided, for such lands, and that on the first day of July, 1907, they made their written application for the entry and purchase of said lands, filed the same with the Register of the Land Office and tendered the purchase price thereof, $20.00 per acre, an aggregate of $4,800.00, being the statutory price fixed for such lands. The amount of land involved is two hundred and forty acres.

The bill further charges that the appellants, at the time of the application to purchase as aforesaid, had done all the things required by them by law to entitle them to such purchase, and that the right to purchase such lands and their right to the patent thereto then and thereby became vested, and that it was the duty of the Register to receive their application, the duty of the Receiver to accept the money and issue the duplicate receipt for said lands to the appellants.

That on the 11th day of January, 1908, both the declaratory statement and the application of the appellants to purchase, as by them made on the previous first of July, were rejected by the Local Land officers for the alleged reason that the entire township in which the lands are located had been theretofore withdrawn from disposition under the coal land laws. That the appellants in due time and manner appealed from the action of the land officers in rejecting said application to the Commissioner of the General Land Office, which officer, on the 30th of March, 1908, by his judgment affirmed the action of the local officers upon the alleged ground, "That the records of the said General Land Office disclosed that the said lands so involved in said application were withdrawn from disposition under the coal land laws under Departmental order of July 26, 1906." That within due time the appellants by proper proceeding caused the decision of the Commissioner of the General Land Office to be reviewed by the Secretary of the Interior and the said Secretary of the Interior on January 30, 1909, affirmed the action of the said Commissioner.

It is further averred that the Departmental Order of July 26th, 1906, was illegal, without authority of law and void, and that appellants' application and tender of money should have been received and the Final Receipt issued.

That said lands, together with the other lands in the township wherein appellants' lands lie, were thereafter by order of the Department restored to entry and the appellants were notified by letter from the Local Land Office of such restoration and that the lands had been classified, and in such letter ap-

pellants were advised of the price at which the said lands would be sold and that appellants would be allowed sixty days from receipt of said letter in which to assert formal claim to the lands. That after the receipt of this letter the appellants on the 22nd of July, 1910, filed in the Local Land Office their verified written application in due form of law, and in all respects in accordance with the rules and regulations of the Land Department then in force and under the provisions of section 2347 of the Revised Statutes to purchase the lands in question.

That appellants published and posted the necessary notices as required by law and the regulations of the Department, and did all things pertaining to their application to purchase which were required of them and that all their proceedings in that behalf were approved by the Local Land Officers.

The bill further avers that the appellants, knowing by rumor and by letter received from the local officers that there might be some dispute as to the price which would be demanded by the department for the lands which they were seeking to buy, wrote, pending their application, to the local officers, seeking advice upon that subject, and were advised by letters written on the 9th and 10th of September, 1910, copies of which are attached to the bill as exhibits and printed in the record on pages 12 and 13, what price would be exacted, showing that such prices ranged on the various lots of land included in the application from $115 to $135 per acre; making a total of $30,000.00 demanded for the two hundred and forty acres of land. The lands in question, as shown by the bill, are, and were at the time of the application, located within fifteen miles of a completed railroad. The ap-

pellees gave as their reason for demanding the price of $30,000.00, that they were instructed so to do by departmental order. Contending that the section 2347 of the Revised Statutes of the United States did not fix absolutely and unequivocally the price at which the coal lands should be sold, but that it fixed a minimum price only, leaving it to the department to fix the price in accordance with the classified values of the land.

The bill alleges:

> "That the said officers in pursuance of their claim and in pursuance of their theory of their duties and the duty of the interior department relative to the administration of the affairs of said department, and in and about the conservation of the assets and wealth of the government, and particularly the coal lands thereof, have conceived it to be their duty to take such steps and declare such values and exact prices or compensation as will deter applicants from the attempted purchase of coal lands or prohibit all save the wealthy from making such purchase. That in pursuance of their ideas and fixed policy of preventing entries of coal land as heretofore made and as has obtained since the act of March 3, 1873, of which the section hereinabove referred to is a part, they, the said officers of the said department, together with the defendants herein, have caused to be prepared, adopted and promulgated various rules, regulations and declarations of policy, wherein and whereby they have among other

things declared, that 'it has been deemed necessary' (meaning it has been deemed by the said department) 'to place such a price on coal land as to make it unprofitable for private citizens to take up government coal land simply to hold it for future mining.'

"That the said price of twenty dollars per acre is a definite and certain price fixed by statute. That the said defendants have not, nor have their superiors, any authority in law, nor are they vested with any power, to fix any price of any kind or character on the coal lands of the United States, or any part thereof, nor on the lands sought to be purchased by your orators. That their attempt so to do and the order promulgated assuming and pretending to fix the price on the lands of your orators herein is an unlawful, wrongful and arbitrary assumption of authority, is void and illegal, and the attempt of these defendants to comply with and carry out the said order is arbitrary and unlawful and constitutes a wrong upon the rights of your orators and an irreparable injury, for the redress of which they have no adequate remedy at law."

And, proceeding, the appellants aver that on the 22d day of September, 1910, after having done all things precedent to and leading up to the purchase of the said lands, and after the lands had been clear listed by the proper officers and admitted to be subject to the application of the said appellants, they, the said appellants, applied to the register of the land

office for the purchase of the said lands and then and there tendered to the receiver thereof the full statutory price for the said two hundred and forty acres of land, being $4,800. That the said defendant Abbey refused to certify to the receiver the correct purchase price of the said lands and the receiver refused to accept the said $4,800.00. That the said defendants demanded of the appellants as a condition precedent as a right to enter and purchase the said lands, the excessive and extortionate sum of $30,000.00, being $25,200.00 in excess of the statutory price of said lands.

And further avers that the defendants threatened that if the said appellants failed to pay the said sum demanded that they, the defendants, would declared the said lands open to entry and permit the same to be entered by other persons. That if the said defendants are permitted to so declare the lands open to entry, it will lead to a multiplicity of suits for the protection of the appellants' rights in the premises, and that the appellants are liable by the acts of the land officers to lose their right to enter coal lands and the moneys expended upon the entries made.

The bill prays that the defendants, appellees here, be restrained and enjoined from carrying, or attempting to carry, out and enforce the various orders, rules and directions of the department whereby they are commanded or directed to exact or require of or from the appellants the said sum of $30,000.00 as a condition precedent to the entry of said lands, or any sum in excess of $4,800.00; that the defendant Abbey be required to accept the application of appellants heretofore made for the entry of the said lands. That he be required to certify to the defendant Lambert, re-

ceiver of the land office, the statutory price fixed by statute for said lands, and that the defendant Lambert be required to accept said price in full payment of the lands involved; and that the said local land officers be restrained and enjoined from declaring the said lands open or subject to the entry of any other person.

The complaint embodying the facts above stated is found in printed transcript of record, pages 1 to 9, inclusive. Following are copies of the exhibits referred to in the bill, pages 9 to 14, inclusive.

To complainants' complaint a demurrer was interposed by the appellees on seven different grounds (pages 15 and 16, Transcript of Record).

GROUNDS OF DEMURRER.

1. Complainants have plain, complete and adequate remedy at law.

2. Complaint is in effect application for mandamus and does not contain any matters entitling the same to the consideration of a Court of Equity.

3. Cause before the court entitled "Bill in Equity" is application for mandamus and court is without jurisdiction to issue the writ of mandamus against defendants as Register and Receiver of the Land Office.

4. It appears from the bill that the Secretary of the Interior is a necessary party to the action.

5. It appears from the said bill that the application of complainants to purchase, made on July 22, 1910, is still pending before the Register and

Receiver named in the bill. That no appeal has been taken to the Commissioner of the Land Office or Secretary of the Interior in the matter concerning which the complaint is made; that the bill was prematurely bought.

> 6. "That the bill of complaint herein does not state any matter of equity entitling the complainants to the relief prayed for, nor are the facts, as stated, sufficient to entitle complainants to any relief against these defendants or either of them."
>
> 7. "That this court is wholly without jurisdiction to grant in whole or in part the relief prayed or any relief whatsover upon the state of facts in the bill alleged."

Application for injunctive relief was heard October 1, 1910. The demurrer was sustained, and, complainants having elected to stand upon their bill as filed, the same was dismissed at complainants' cost. (Page 17, Transcript of Record; marginal page 30.)

The trial court sustained the demurrer evidently under the impression that it had no power to enjoin the action of the Register and Receiver of a local land office in any proceeding involving the acquisition of title to public lands, as manifest by the following certificate found on page 22 (marginal page 39), Transcript of Record.

> "At the request of the complainants above named, we hereby certify that the decree of this court rendered on October 1, 1910, in the above entitled cause, wherein the demurrer of the defendants to the bill of

complaint of the complainants was sustained and said bill of complaint dismissed, was given and rendered upon the ground that a ruling or decision by the officers of a local land office of the United States made in the usual course of proceedings for the acquisition of the title to public lands is not subject to review or correction in the courts while the title to the lands remains in the United States, and also upon the further ground that while the title to public lands remains in the United States and the proceedings for acquiring that title are still in fieri, the courts are without power, by injunction or othewise, to control the judgment and discretion of the officers of the land department in respect of the disposal of such lands under the public land laws.

"Witness the hands of the Judges presiding at the hearing of said cause and participating in the decree rendered therein, as above stated.

"Dated October 8, 1910.

"WILLIS VAN DEVANTER,
"Circuit Judge.

"ROBERT E. LEWIS,
"District Judge."

ASSIGNMENT OF ERRORS.

Of the assignment of error found on page 18, Transcript of Record, we feel that the first presents

for argument all the questions involved in the review of this cose, to wit:

> "First. The court erred in sustaining the demurrer of defendants filed to the complaint of complainants in said cause."

ARGUMENT AND CITATIONS.

While seven grounds of demurrer are interposed, it is without doubt that but one query was raised which invited the attention of the court, namely: Does the complaint state facts which invite the equitable interposition of this court? And this query the court answered in the negative upon the theory, that,

> First. "A ruling or decision by the officers of a local land office of the United States made in the usual course of proceedings for the acquisition of the title to public lands is not subject to review or correction in the courts while the title to the lands remains in the United States."
>
> Second. "While the title to public lands remains in the United States and the preceedings for acquiring that title are still in fieri, the courts are without power, by injunction or otherwise, to control the judgment and discretion of the officers of the land department in respect to the disposal of such lands under the public land laws."

The rule of law announced by the court in its first reason assigned is too general to find support in

the precedents made upon the subject; and the second reason, even should it be accepted as the correct interpretation of the law, is not a proper application to the facts involved herein. In other words, it is clear that the court misconstrued the facts contained in the bill which are admitted by the demurrer to be true.

Were it conceded that the act complained of, and which the appellants seek to have restrained, was an act within the purview of the officers' duty or power as fixed by law and a duty requiring the exercise of official judgment or discretion, then the rule announced in the second reason given by the court would apply, and upon the determination of the character of the act sought to be enjoined and the extent of the power vested in the local land officers in the premises depends a correct resolution of the merits involved.

In approaching this consideration let us inquire what are the acts sought to be enjoined, and then look to the facts out of which they grow. Appellants seek to restrain the local officers, first, from demanding and exacting from them the sum of thirty thousand dollars as the purchase price of two hundred and forty acres of land which they have a right under the Federal statutes to buy for the sum of $4,800.00. Second, that they be restrained from declaring the lands now in possession of the appellants open to the entry of any other person or persons who may see fit to apply for purchase thereof.

The sum and substance of the facts set out in the complaint upon which the appellants base their right to make this purchase are a full compliance with the land laws, rules and regulations thereunder, giving to them as citizens qualified the right to enter these lands. That they have done all of the things

required of them to do and have tendered the statutory price therefor, and that nothing further remains for them to do, and that no discretionary or judicial act remains for the land officers to do, but that their duty in the premises is purely ministerial in character and not even of an equivocal or doubtful character, and these alleged facts are admitted to be true as the cause now stands before the court.

The rights of the appellants, as well as the duty of the appellees, are to be found in the statute. If the Federal Statute fixes definitely the price of coal lands, located as those here involved are, and confers no power or authority upon the land department to change the price, then the duty of the local land officers is made clear and unequivocal by the statute. Hence the question of the price of the land as fixed by statute is one of the material matters, if not the principal matter, to be determined in this review. Incidentally there is involved the question of the right of the executive department to withdraw public lands from entry for uses or purposes not designated by statute, which question will be presented later in this brief.

The statutory right to enter coal lands in the manner sought to be exercised by appellants here, as well as the duty of the local land officers, is found in section 2347, Revised Statutes, which we quote, and for the purpose of emphasis take the liberty of italicizing portions thereof, as follows:

> "Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons

severally qualified as above, *shall,* upon application to the register of the proper land office, *have the right to enter,* by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than *twenty dollars* per acre for such lands as shall be within fifteen miles of such road."

The qualifications of the complainants being confessed and the lands being subject to entry, and looking to the statute for the extent and limitations of our rights, we find it in plain words, viz.:

> "That complainants being qualified *shall* by application to the register *have the right to enter* not exceeding three hundred and twenty acres of vacant coal lands upon payment to the receiver of *not less than twenty dollars per acre* for such lands."

JURISDICTION OF THE COURT.

The foregoing statute is not ambiguous. Its language admits of but one interpretation. It can re-

ceive no other construction than that Congress conferred upon qualified entrymen the right which should incept when such entrymen made application to the register (not to some other land officer), and paid to the receiver twenty dollars per acre; not some other sum. It stands to reason that if the right is given on payment of not less than twenty dollars, it will be exercised when that twenty dollars is paid or tendered; and to exact more than twenty dollars is a denial of the right on the terms provided by statute. So it seems clear, without argument, that if the receiver or register, or both, demand more than twenty dollars they are prohibiting the exercise of the right which Congress has conferred and therefore acting beyond and contrary to the law. And being outside of the pale of the law are not entitled to its protection, even though the rule exists that they shall not be interfered with by the courts when exercising their official functions within the law.

It seems to be the view of the trial court that no act of a register or receiver in dealing with the public lands, while the title remains in the government, be it ever so arbitrary or contrary to the letter of the law, can be restrained or prevented by the action of the courts. Judicial sanction cannot be found for this radical doctrine. The limit to which the courts have gone is, that so long as the title of the land remains in the government the officers of the land department will not be interfered with in the discharge of their official duties, "unless those duties are of a character purely ministerial and involving no exercise of judgment or discretion."

Litchfield vs. Richards, 9 Wall., 575.

The converse of the proposition would seem to be true, that if the duty involved were purely ministerial, not involving the exercise of discretion, that the courts on proper application will interfere for the protection of individual rights. If the courts will coerce the performance of a plain ministerial duty, on the part of an executive officer, on what principle of justice will they decline to prevent the doing of a ministerial act by a public officer which inflicts an irreparable injury on some person in his property rights? As we shall show by later citations, the courts have so interfered to prevent the infliction of injury by other federal executive officers. Why the sacred immunity of officers of the land department?

We frankly admit that if the officers sought to be restrained were acting within the purview of their authority, of if engaged in an act open for either judicial or executive consideration in which discretion or judgment were called in the exercise, that this court would not interfere, but if the act sought to be enjoined (for the purpose of this consideration assuming it to be an official act) is purely ministerial, with no room for the exercise of discretion, this court has the power to right a wrong, or rather prevent a wrong about to be inflicted, by the ministerial act, if such act is unauthorized. There has been much contention as to when the court will interfere with executive officers in the discharge of their public functions, but we think the rule is now well settled that where such functions are discretionary the courts will not interfere, but where they are ministerial they will, or will not, interfere, according to the exigencies of the case presented. The authorities in this behalf will be later considered.

But the question herein involved calls for no distinction between discretionary and ministerial duties. We are not seeking to restrain the discharge of a duty, or to enforce the discharge of a duty. We are seeking to restrain the defendants from doing an unlawful and wrongful thing, which unlawful and wrongful thing if permitted to be done inflicts a wrong and injury upon the complainants here, for which we contend they have no plain or adequate remedy, if, in fact they have any remedy at all, except the interference of a court of equity by its preventive mandate.

So we are really brought to the question, not as to whether the act is discretionary or ministerial, but, is it lawful or unlawful? If it is lawful for the defendants to demand the sum of $30,000 for these lands, then we admit we have no standing in court. If it is unlawful, then we insist they can not justify it upon the theory of any discretion resting in them. They have not the discretion under cloak of official authority to commit a robbery. Discretion exists, and the law permits the exercise of it, only within the purview of granted power, and if parties claiming to be public functionaries and claiming to discharge public or official duties step beyond the pale of the law, they have gone beyond its protection, and not only will they not be protected in their attempted usurpation, but courts of equity will restrain them from such exercise just as they do private individuals.

2d Story's Equity, section 955, 12th Ed. (Where Process of Injunction can not reach the principal who is the true source of mischief, injunction may be awarded against the agent. 3 Pomeroy, section 4340, 3d Edition.)

Noble vs. Union R. L. & R. Co., 147 U. S., 165; 13 Sup. Ct. Rep., 271.

Board of Liquidation, etc., vs. McComb, 2 Otto, 531-41, 92 U. S.

La Chapalle vs. Buffs Indian Agt., etc., 69 Fed., 481.

American School of Magnetic Healing vs. McAnnulty, 187 U. S., 94; 23 Sup. Ct., 33.

In the last case cited the complainant sought to restrain a postmaster in a Missouri town from continuing to refuse to deliver certain mails addressed to complainant, or from returning letters which had been addressed to it, which refusal was made in compliance with an order of the postmaster general, and the question arose whether or not the court should interfere with an executive officer in the discharge of official duties. In that case there seemed to be some room for doubt as to whether or not the postmaster general, in making the order complained of, acted within his authority, viz.: The statute under which he acted gave him power to determine whether or not letters transmitted through the postoffice were within the inhibited class. If he found them to be within the inhibited class it was within his power to exclude them, but in the judgment of the court the postmaster general, through a mistaken construction of the law, applied it to a state of facts which it was never intended to reach, and therefore made an order which it its effect was void and should not be enforced to the injury of those whom it was intended to affect. In construing the duty and power of the court, it observes:

"That the conduct of the postoffice is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head, or one of the subordinate officials, of that department, which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief.

"The land department of the United States is administrative in its character, and it has been frequently held by this court that, in the administration of the public land system of the United States, questions of fact are for the consideration and judgment of the land department, and its judgment thereon is final. Burfenning vs. Chicago, St. P., M. & O. R. Co., 163 U. S., 321; 41 L. Ed., 175; 16 Sup. Ct. Rep., 1018; Johnson vs. Drew, 171 U. S., 93, 99; 43 L. Ed., 88, 91; 18 Sup. Ct. Rep., 800; Gardner vs. Bonestell, 180 U. S., 362; 45 L. Ed., 574; 21 Sup. Ct. Rep., 399.

"While the analogy between the above cited cases and the one now before us is not perfect, yet even in them it is held that the decisions of the officers of the department upon questions of law do not conclude the courts, and they have power to grant relief to an individual aggrieved by an erroneous

decision of a legal question by department officers.

"Thus, in the Burfenning Case, 163 U. S., 321; 41 L. Ed., 175; 16 Sup. Ct. Rep., 1018, a tract of land had been reserved from homestead and pre-emption, and had been included within the limits of an incorporated town, notwithstanding which the land department had decided that the land was open to entry, and had granted a patent under the statute relating to homesteads. The court said that 'when, by act of Congress, a tract of land has been reserved from homestead and pre-emption, or dedicated to any special purpose, proceedings in the land department in defiance of such reservation or dedication, although culminating in a patent, transfer no title, and may be challenged in an action at law. In other words, the action of the land department can not override the expressed will of Congress, or convey away public lands in disregard or defiance thereof.'

"The facts, which are here admitted of record, show that the case is not one which, by any construction of those facts, is covered or provided for by the statutes under which the Post Master General has assumed to act, and his determination that those admitted facts do authorize his action is a clear mistake of law as applied to the admitted facts, and the courts, therefore, must have power in a proper proceeding to grant relief. Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action

> of a public and administrative officer, whose action is unauthorized by any law, and is in violation of the rights of the individual. Where the action of such an officer is thus unauthorized, he thereby violates the property rights of the person whose letters are withheld."

In New Orleans Nat'l. Bank vs. Merchant, reported in 18th Federal at page 851, the court in quoting from Teal vs. Felton, 12 How., 284, uses the following language:

> "It is the law which gives the justification, and nothing less than the law can give irresponsibility to the officer, although he may be acting in good faith, under the instructions of his superior of the department to which he belongs. Here the instructions exceed the law."

Both of the actions above referred to were actions against the Post Master, one for withholding mails under an order of exclusion and the other demanding excess postage as conditioned to the delivery of mail. The excess postage demanded was under the instruction from the Post Master General and claimed to be under the construction of a statute, but the court held the order of the superior was beyond the law, hence void, therefore the subordinate who undertook to enforce it or carry it out had acted beyond the law, was inflicting a wrong, and was subject to the injunctive order of the court.

In one of the earliest, if not the earliest case in which the power of the courts to interfere with or

regulate the conduct of executive officers was involved, was Marbury vs. Madison, 1st Cranch, 137. The court announces the rule which has been substantially followed by all later decisions, viz.: That where the action involved is not of a political or executive character and calls into exercise no judgment or discretion, but is purely ministerial in character and which affects private rights of individuals, the party called upon to act is amenable to the courts.

If the ministerial act within the law will be enforced or restrained by the order of the court *afortiori*, will any attempted wrongful ministerial demand *without* the law be restrained by the court when such restraint is the only adequate protection which the aggrieved party has?

In Rector vs. Gibbon et al., 111 U. S., 276; 4 Sup. Ct., 612, involving the right of the court to grant relief where the action of the land office was involved, the court, after adverting to certain executive power of the land office, observes:

> "On the other hand, there has always existed in the courts of equity the power in certain classes of cases to inquire into and correct mistakes, injustice, and wrong, in both judicial and executive action, however solemn the form which the result of that action may assume when it invades private rights; and by virtue of this power the final judgments of courts of law have been annulled or modified, and patents and other important instruments issuing from the crown, or other executive branch of the government, have been corrected or declared void, or other

> relief granted. No reason is perceived why the action of the land office should constitute an exception to this principle."

If the order of the department under which the defendants here claim to act is not clearly within the power granted to the Interior department, it is not law and has no binding force or effect.

> U. S. vs. United Verde Copper Co., 196 U. S., 207; 25 S. C., 222.
>
> Ballinger vs. U. S. ex rel, Frost, 216 U. S., 240; 30 S. C., 340.

In Ballinger vs. U. S., supra, the court, speaking through the late Justice Brewer, observes:

> "When, in pursuance of the legislation of Congress, rights have become vested, it becomes the duty of the courts to see that those rights are not disturbed by any action of an executive officer, even the secretary of the interior, the head of a department. However laudable may be the motives of the secretary, he, as all others, is bound by the provisions of congressional legislation."

It seems well settled by the rules of this court that mandamus or injunction is available to require the performance of a duty or prevent a wrong where the duty sought or the act complained of is purely ministerial. The question most difficult of solution usually is whether the act is discretionary or ministerial. The only possible judicial or discretionary act which the land officers in this case could claim

to have had under consideration was the determination of the price of the land, and this they must do from the reading of the statute; one statute and one section thereof. Is this act discretionary? In Roberts vs. the United States, 176 U. S., 221; 20 Sup. Ct. Rep., 376, the court, in distinguishing the cause under consideration from United States ex rel. vs. Black, states:

> "In this case the facts are quite different. There is but one act of Congress to be examined, and it is specially directed to the treasurer. We think its construction is quite plain and unmistakable. It directs the treasurer to pay the interest on the certificates which had been redeemed by him, and the only question for him to determine was whether these certificates had been redeemed within the meaning of that act. That they were, we have already attempted to show, and the duty of the treasurer seems to us to be at once plain, imperative, and entirely ministerial, and he should have paid the interest as directed in the statute.
>
> "This case comes within the exception stated in the Black case, that where a special statute imposes a mere ministerial duty upon an executive officer, which he neglects or refuses to perform, then mandamus lies to compel its performance; but the court will not interfere with the executive officers of the government in the exercise of their ordinary official duties, even when these duties require an interpretation of the law.

> the court having no appellate power for that purpose. On this last ground the court denied the writ."

We think the quotation quite applicable to the case at bar. Here the statute defines the right and states the duty of the register and receiver. We see no possibility of two different constructions of the statute. If the officer violated it, he did so at his peril.

It seems clear to us that the act complained of is not only of a ministerial nature, but the demand of the officer was unlawful, and if unlawful, certainly the court ought to have the power to prevent it; hence, it may be important to go further in the investigation of the unlawful character of the officers' demand, and in this we shall consider the question of right on the part of the department to fix the price of coal land.

POWER OF THE SECRETARY OF THE INTERIOR.

The department can exercise only such power in making regulations as is conferred upon it by statute. Section 161, Rev. Stats., 3rd Fed. Stat. An., page 58, provides:

> "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his departments, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and pre-

servation of the records, papers, and property appertaining to it."

The only specific authority to make regulations concerning the coal land act is found in section 2351, section 5 of the coal land act, as follows:

> "The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections."

The department must prescribe its regulations *not inconsistent with law*. The authority specifically granted under the Coal Land Act is to make the needful rules and regulations for carrying into effect the provisions of said act, not to thwart or repeal the effect of it.

We understand it to be the contention of the department, and such contention is manifest by a letter written by the defendants to the appellants here, that inasmuch as the act in question uses the term "not less than $20.00 per acre," it is left to the department to fix any value above that sum. How such contention can be logically made, we cannot conceive, inasmuch as no power is vested in the department to dispose of the public lands, or make any contract relative thereto.

The Federal Constitution, Sec. 3, Article 4, provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Even if Congress in enacting Sec. 2347, fix-

ing the price at not less than $20.00 per acre, intended to reserve the right to charge more, it has nowhere vested in the interior or any other executive department the power to fix a greater or any other price. Such power could not be exercised without an express delegation thereof.

PRICE OF COAL LAND.

But it is clear to our minds that Congress by the passage of the section above quoted intended to and did fix the price of coal land depending upon the distance thereof from completed railways positively at $10.00 and $20.00 per acre. And the United States Supreme Court has undoubtedly entertained this same view.

In the United States vs. The Trinidad Coal & Coke Co., reported in 137 U. S. at page 160, 11 Sup. Ct., 61, the court had occasion to refer to the price of coal lands as fixed by the act and drew a clear distinction between price and value. That was an action to set aside the patent to certain coal lands for alleged fraud committed in the entry thereof. The patents were set aside and it was contended by the patentee that the United States should do equity and refund the price theretofore paid for the lands, contending that the government should not take both the lands and the money, and that the bill should not be sustained, for the reason that government had not proffered to do equity. The court, after holding that the rule did not obtain, says:

> "In the matter of disposing of the vacant coal lands of the Unted States, the govern-

> ment should not be regarded as occupying the attitude of a mere seller of real estate for its market value. It is not to be presumed that the small price per acre required from those desiring to obtain a title to such lands had any influence in determining the policy to be adopted in opening them to entry. They were held in trust for all the people; and, in making regulations for disposing of them, Congress took no thought of their pecuniary value, but, in the discharge of a high public duty, and in the interest of the whole country, sought to develop the material resources of the United States by opening its vacant coal lands to entry by individuals and by associations of persons at prices below their actual value."

The foregoing language manifestly constitutes a construction by this court of the act before us, and clearly holds that Congress fixed the price and that it intended to fix the price below the value, and did not leave it open for any department to fix a different price, or to exact even the confessed value of the lands. Again, in the same case in the court below, tried before the late Justice Brewer, then Circuit Judge, reported in 37th Fed. at page 180, that eminent jurist had occasion to refer to the price of the land and does so in the following language:

> "And the act of Congress gives a right to purchase to persons possessing certain qualifications, upon the payment of a certain amount of money, the maximum being $20.00

per acre, which was paid in this case. So that the parties who entered (the patentees) had the right to purchase, and the government has received full pay—the highest fixed price for the lands it has conveyed."

If, in the face of these decisions, it can be yet contended that there is any doubt as to what Congress intended to do, we have a right to refer to the journals of that august body and determine from the comments there made in debate as to the subject running in the minds of the parties who moulded the bill into law. For the benefit of the court we have attached to this brief, as Appendix I, a copy of so much of the journal as pertains to this subject.

From a perusal of the excerpts thus appended it will be observed that the principal thing which provoked discussion upon the passage of the bill was the price at which the lands were fixed, and amendments were offered to the bill as it then stood, suggesting different prices for the land, ranging from $2.50 per acre to $100.00 per acre, but after a full discussion and enlightenment upon the subject, and after the assurance by the Interior Department that the price fixed was even higher than it ought to be, all the amendments were withdrawn and the price permitted to stand and became enacted into law at $10.00 and $20.00 per acre, as now found in the statute.

The history of this legislation as shown by the copy of the journal appended and a study of the statutes to which the act of March 3, 1873, was amendatory, discloses likewise the manner in which the term "not less than twenty" crept into the statute. The first act upon the subject of coal lands,

being the act of July 1st, 1864 (13 S. L., page 343), authorized the sale of such lands, by order of the President, on public notice, to the highest bidder and fixed a minimum price below which the bid should not go. The second act, of March 3, 1865, extended the preference right to purchase such lands, after they had been offered for sale, to persons engaged in the business of actual coal mining upon public lands for purposes of commerce, and such purchase was to be made at the minimum price. In both of those acts, as competitive bidding was allowed, it was necessary to fix a minimum and it was fixed at not less than $20.00. When Congress came to amend the act and further extend its privileges, it was most natural that it would use so much of the language of the act which it was amending as it could, and add to it the necessary language to extend the provisions in accordance with the legislative intent.

Not only is the statute clear in its meaning without the aid of the legislative discussion held thereon, but the interpretation which we ask is the same which the department of the interior placed upon the statute contemporaneous with its enactment and has adhered to from that date to about three ago. In a departmental regulation issued July 31, 1882, we find the following:

> "The price per acre is $10.00 where the land is situated *more* than 15 miles from any completed railway, and $20.00 per acre where land is *within* 15 miles of such road. The price of the land, however, must be determined by its distance from a completed railroad at the date of the payment and

entry, irrespective of the preference-right of entry."

1st L. D., 689, paragraph 12.

This has been universally the construction of the department as shown by the following cases:

In re Foster et al., 2 L. D., 730-733;
Joseph L. Colton, 10 L. D., 422;
Clinton S. Conant, 29 L. D., 637;
Secretary's Instructions, 1 L. D., 540;
Edward B. Largent, et al., 13 L. D., 396;
Allen L. Burgess, 24 L. D., 11.

The construction placed upon a statute by an executive department and followed for a term of years is entitled to great weight, as repeatedly held by this court.

U. S. vs. Finnell, 185 U. S., 236; 22 Sup. Ct. Rep., 633.

And the construction thus placed upon the statute will be respected by the courts unless obnoxious to the plain provisions of the statute, and if doubtful will not be overruled except for cogent reason.

Edwards vs. Darby, 12 Wheat., 206.

U. S. vs. Fillbrick, 120 U. S., 52; 7 Sup. Ct., 413.

U. S. vs. Alabama G. S. R., 142 U. S., 615; 12 Sup. Ct., 306.

RIGHT OF THE EXECUTIVE TO WITHDRAW LANDS FROM ENTRY.

It will be observed from the admitted facts charged in the bill of complaint that the appellants here made their first application for the lands in question on July 1, 1907, having taken possession thereof and inaugurated their development and improvements March 28th of that year. Their application, made at that time, was rejected upon the sole ground that the lands had been withdrawn from entry by executive order under date of July, 1906. Now, if this order of withdrawal were unauthorized, then the rights of the appellants here should be construed under the law and departmental regulations as they existed on the said first day of July, 1907, for on that day they tendered their money and had completed and done all things necessary to entitle them to a patent. We assume it will not be denied that where parties have lawfully tendered their money to the department and the tender wrongfully rejected, then the rights of the applicants are the same as though the money had been accepted; and it is held by this court that where an applicant under the public land law has done all the things by him required to be done, and paid his money, that his rights then become vested, and that it is the duty of the court to protect those vested rights.

Ballinger vs. United States, ex rel. Frost, supra.

Neither the president nor any of the executive officers in the several departments of the government

can make a reservation or appropriation of the public domain for any purpose whatever without the express authority of law.

United States vs. Fitzgerald, 15 Peters, 421.

United States vs. Tichenor, 12 Fed. Rep., 423.

At the time of the alleged withdrawal, July, 1906, the president had power to withdraw only for such purposes and under such circumstances as were designated by Congress. No purpose was stated for the withdrawal here attempted; simply a blanket order withdrawing from entry certain designated townships. Such withdrawal under the authorities above cited was inoperative to reserve the lands from entry. Such being the case, the land remained open, vacant land, and the application made by complainants in July, 1907, should have been received. Their rights then incepted and should be now considered as of such date, regardless of any subsequent regulations or legal enactments.

Osborn vs. Froyseth, 30 Sup. Ct., 420.

In seeking advice as to the power of the executive over the public lands, we would go naturally to our fundamental law, and from a perusal of that document we find no power given to the president over public lands, but it is vested exclusively in Congress. In none of the constitutional powers vested in the president do we find, even by the remotest implication, a delegation to him of control over the public lands. If, then, he has any power over the public lands, it

must be found in the acts of Congress. There are numerous such acts, but in each one the extent of his power of withdrawal is clearly limited, and the purposes for which he may withdraw clearly stated, and so far as we are able to discover, the courts, and even the Department of the Interior, when called upon to construe the validity of a withdrawal, have invariably sought the reason therefor in some existing statute, and failing to find it have held the withdrawal illegal and inoperative.

Northern Pac. R. R. Co. vs. Davis, 19 L. D., 87.

Titamore vs. So. Pac. R. Co., 19 L. D., 249.

Instructions, 33 L. D., 104.

Fort Boise Hay Reservation, 6 L. D., 16.

U. S. vs. Blendaner, 122 Fed., 703.

Hewitt vs. Schultez, 180 U. S., 139, 21 Sup. Ct., 309.

So. Pac. vs. Bell, 183 U. S., 675, 22 Sup. Ct., 232.

The authorities above cited demonstrate to our minds that the withdrawal order of July, 1906, was unauthorized and void. If so, then appellants' application made July 1, 1907, should have been accepted. But it was rejected and such rejection concurred in by the commissioner of the general land office and the secretary of the interior. If the action of these officers was wrong and affects our property rights, where, when and how shall we seek relief? Are we compelled to wait until this land in the dim distant future is conveyed to some other person by patent, then

sue to have him declared a trustee for us, or shall we proceed against the first officer whose wrongful act constitutes a barrier in the way of our progress to a conservation of the right which the federal statutes vouchsafe unto us?

Upon the invitation held out by the statute, appellants have expended their money, improved the land and materially changed conditions, which would have not been done save for the promises embodied in the statute. If the relief here sought is not granted, the appellants lose the money by them expended, as well as the benefits held out by statute, and there is no recourse for them.

We submit that the admitted allegations of the bill discloses a condition appealing for equitable interposition, and the court in holding otherwise erred to the manifest prejudice of the appellants here, for which reason we respectfully submit the judgment of the court below should be reversed.

Respectfully submitted,

ROBERT H. WIDDICOMBE,
A. WATSON McHENDRIE,
JESSE G. NORTHCUTT,
CLARK, PRENTISS & CLARK,
Solicitors for Appellants.

APPENDIX I.

The bill before the senate was known as Senate Bill No. 522. From the Congressional Globe, part 3, second session, Forty-second Congress, 1872, beginning on page 2013 of March 28, 1872, we find the following:

"COAL LANDS.

"Mr. Stewart. I move now that the senate proceed to the consideration of Senate Bill No. 522, the coal land bill. I will state that this is a bill which has been prepared at the department with great care, and has been reported by the committee on public lands. I had nothing to do with the preparation of the bill, but I believe that it is a good bill.

"Mr. Corbett. The only objection I have to taking up this bill now is that I have left a letter with the department and asked them to prepare an amendment. They informed me that the bill was now before the senate, and that they would send me an amendment to cover the coal lands in our state, where they have been reported as agricultural in some instances, but in consequence of the price being twenty dollars an acre there are not many taken up.

"Mr. Stewart. That would be special legislation. This is a general bill, and I hope it will be taken up. It is important that we have general legislation on the subject.

"Mr. Corbett. It is important that there should be legislation on it, but I should like to have the amendment inserted which I sent for and expect today.

"The Vice-President. The merits of the bill cannot be debated on the motion to take up.

"The motion was agreed to; and the bill (S. No. 522) to provide for the sale of the lands of the United States containing coal was considered as in committee of the whole.

"The first section provides that any person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally so qualified, shall upon application to the register of the proper land office, have the right to enter, by legal subdivisions any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road."

(Other sections of the Bill explained.)

"Mr. Stewart. The Delegates from the Territories have made a suggestion of an amendment, accompanied by a letter explanatory of it, in which I think they are correct. They think the bill should be applied to unsurveyed as well as surveyed lands. I move, therefore, in section five, line one, to strike out the word 'surveyed;' in line five strike out the words 'upon unsurveyed lands,' and in line seven to strike out 'upon surveyed land.' These verbal amendments will have the effect of making the section apply to unsurveyed as well as surveyed lands.

"Mr. Robertson. Is this bill reported from a committee?

"Mr. Stewart. Yes, sir; by the Committee on Public Lands.

"Mr. Hanlan. Let the amendment be read.

"The Vice-President. The Secretary will report the fifth section as it will stand if the amendments proposed by the Senator from Nevada are agreed to."

(Amendment not pertinent in this consideration.)

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"Mr. Robertson. I have not the bill before me, but I ask the Clerk to read that part of it relating to the price per acre.

"Mr. Stewart. I ask for a vote upon this bill now.

"Mr. Morrill, of Maine. I do not know that I have any objection to it; but it is apparent that it is a very important bill, and it ought to be explained.

"Mr. Stewart. I think the best explanation would be the letter of the Commissioner of the General Land Office.

"Mr. Morrill, of Maine. We have not had that. I do not want to be eternally objecting to what is going on here in the morning hour, constantly bringing up bills which are not explained. It seems to be taken for granted that anything relating to the public domain is to go through as a matter of course, no matter how much land it involves. When a bill of that description is brought up, it seems to be taken for granted that it is to go through when anybody gets the floor to call it up. We seem to have got into a

chronic habit on that subject. I think it is wrong. I do not know that I have the slightest objection to the bill, but it relates to a large subject; it is a very important bill which allows the disposition of all the coal lands in this country on the public domain. I do not know that that is a good thing to do. Perhaps it is; perhaps the terms and conditions on which it is proposed here to be done are all right; but I submit to the honorable Senator that it is not quite fair to the Senate to call up such a bill within ten minutes of the close of the morning hour and ask that that bill shall be passed without the slightest explanation in the world."

PAGE 2084. APRIL 2.

"The Vice-President. But the morning business is now concluded, and a bill can be reached by formal motion adopted by a majority. The Senator from Nevada moves to proceed to the consideration of the bill in regard to coal lands.

"The motion was agreed to.

"SALE OF COAL LANDS.

"The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 522) to provide for the sale of lands of the United Stats containing coal.

"Mr. Stewart. I will just state that this bill is reported from the Committee on Public Lands, having been prepared by the Department of the Interior, and if any Senator wishes information on it I propose to have the letter of the Department read, if that is desired.

"The Vice-President. The letter will be read.

"The Chief Clerk as follows:

"DEPARTMENT OF THE INTERIOR.

"Washington, D. C., February 7, 1872.

"Sir: In answer to the request of your committee to be furnished with the views of the Department on Senate bill 522 to provide for the sale of coal lands, I have the honor to inclose herewith a copy of the report of the Commissioner of the General Land Office on the subject, in which I fully concur.

"I am, sir, very respectfully, your obedient servant,

"C. DELANO,
"Secretary.

"Hon. S. C. Pomeroy, Chairman Committee Public Lands, United States Senate.

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., February 6, 1872.

"Sir: I have examined the inclosed bill—Senate 522—"to provide for the sale of the lands of the United States containing coal," referred to this office by the department proper, and with reference to the subject I have the honor to state as follows:

"The only legislation heretofore had by Congress respecting coal lands is comprehended in the act of July 1, 1864 (Statutes, 13, page 243), and the act supplemental thereto, approved March 3, 1865 (same, page 529).

"The first of these enactments authorizes the president, after three months' public notice, to dispose of any tracts embracing coal beds or coal fields,

constituting a portion of the public domain, to the highest bidder, and in suitable legal subdivisions, at a minimum price of twenty dollars per acre, and allows any such tracts not disposed of at such public offering to be thereafter entered at private sale at such minimum. This law is objectionable in affording no protection whatever to parties who may have actually expended their time, labor and capital in opening up and developing coal mines in the public domain, and also in failing to limit the right of purchase to a given quantity, thus interposing no bar to monopoly.

"As no lands have ever been proclaimed for sale under said act, of course no entries have been affected thereunder.

"The supplementary act of March 3, 1865, aforesaid, provides in substance that citizens of the United States who were on the 3rd March, 1865, in the business of bona fide, actual coal mining upon public lands for purposes of commerce, may have the right to enter one hundred and sixty acres or less quantity in legal subdivisions, including their mining improvements and premises, at the minimum price of twenty dollars per acre.

"The privilege thus granted is a special and not a general one, affording no protection to miners unless they were operating coal bed or coal fields on the 3d March, 1865.

"Under its provisions several entries have been affected by parties coming within the letter of its requirements where the lands have been surveyed.

"The proposed law will, if adopted, guard against monopoly by restricting the right of purchase to a

stipulated number of acres, will protect the rights of parties who are now developing these mines, or who may hereafter expend their labor and capital in doing so, by giving them a preference right of entry of a specified number of acres embracing their improvements, and will enable the government to realize a fair price for the tracts so disposed of.

"Proximity to completed lines of railroad forms the basis of acre valuation.

"The acts of Congress heretofore cited with reference to coal lands are virtually inoperative, and a thorough consideration of the subject leads this office to believe that the proposed legislation would tend greatly to the public interest and enable the department to deal practically with a question assuming great importance in the administration of our public land system.

"With great respect, your obedient servant,

"WILLIS DRUMMOND,

"Commissioner.

"HON COLUMBUS DELANO,

"Secretary of the Interior."

"HOUSE OF REPRESENTATIVES,

"Washington, D. C., February 17, 1872.

"In relation to Senate bill No. 522, introduced January 23, by Senator Pomeroy, I have to say that the delegates from the several territories have carefully considered the same, and have instructed me as chairman of their sub-committee to urge the passage of the bill with the amendments indicated by erasures in the bill hereunto attached.

"The object of the proposed amendment is to abolish the distinction between surveyed and unsurveyed lands. The bill, as drawn originally, offers a premium to jumpers, and would occasion general litigation, and would probably lead to scenes of violence in many instances.

"It is the opinion of the delegates who represent the interests affected by this bill that no distinction should be made between claims on the public lands, surveyed and unsurveyed.

"The man who in good faith prospects and develops a coal field in a section of country where the surveying officers have never dared to go should not be robbed of the profits of his energy and courage by anyone disposed to intrude upon his claim.

"The bill with proposed amendments will give general satisfaction to men of the West.

"W. T. JONES,
"Delegate from Wyoming."

"Mr. Morrill, of Maine. I wish to say only one word. The other morning I asked some explanation of this bill. It was too late then to give it. Since then I have looked at the law as it now stands in connection with this bill. I find that as a general proposition this bill reduces the price of coal-lands from twenty to ten dollars, except where it is within twenty miles of a railroad, and there it retains the original price. Of course I have no information on the subject whether that is a fit and proper thing to do so far as the interests of the Government are concerned, but looking into a communication of the Commissioner of the Land Office, I find that he states it as his opinion that it would be in the interest of the Gov-

ernment and in the interest of all parties to reduce the price of those lands to this point, and even to a lower point still. I have no information beyond that. I do not rise to oppose the bill, as I did not then; I asked simply for an explanation of the bill.

"Mr. Corbett. In connection with this——

"Mr. Pratt. Mr. President——

"The Vice-President. The Senator from Indiana yielded on condition that this should give rise to no debate.

"Mr. Corbett. I ask for the reading of a very short letter from the Department, written since then, showing that the Department recommend the reduction even to a lower price. The letter which I refer to speaks of reducing the lands to $2.50 an acre. I will make a motion to fix the price of these lands at five and ten dollars instead of ten and twenty; five dollars where the bill says ten dollars, and ten dollars where the bill says twenty dollars. I believe that the Government will get more money from the land if we fix the price at these rates than they will at the higher figures. That is the opinion of the Department as stated by the letter which I hold in my hand. It is short, and I ask to have it read.

"Mr. Pratt. I shall have to object to any further consideration of the bill.

"Mr. Stewart. One moment. Let us have a vote on the amendment."

Page 2430, April 15.

"SALE OF COAL LANDS.

"Mr. Stewart. I move to take up Senate Bill No. 522.

"The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 522) to provide for the sale of the lands of the United States containing coal, the pending question being on the amendment of Mr. Corbett.

"Mr. Robertson. This is a very important bill affecting the interests of the Northwest. I think it ought to be read again.

"The Vice-President. The pending amendment will first be read. On the third reading the Senator can demand the reading of the bill in full.

"The Chief Clerk. The amendment is in line thirteen, to strike out "ten" and insert "five"; and in line fifteen, to strike out "twenty" and insert "ten"; so as to read:

"'Upon payment to the receiver of not less than five dollars per acre for such lands when the same shall be situated more than fifteen miles from any completed railroad, and not less than ten dollars per acre for such lands as shall be within fifteen miles of such road.'

"Mr. Corbett. My object in offering the amendment is to get a greater revenue from these lands for the Government than is now got. We are receiving nothing really from coal lands. If the price is fixed too high, they will be entered as agricultural lands in almost every case. If you fix a reasonable price, if parties know they are coal lands, they will not try to deceive the Government, but they will enter them at the established price. I seek to avoid difficulties hereafter that may possibly arise. My only object is to get the greatest revenue for the Government. I believe we shall get a greater revenue under this amendment than by fixing the price too high.

"Mr. Robertson. I have the same object in view that the Senator from Oregon has, and I think the proposition I mean to offer will bring about better results to the Government. I move to amend the amendment by inserting, instead of "five dollars," "twenty dollars," in the thirteenth line, and in the fifteenth line, instead of "ten dollars," to insert "$100." Even twenty dollars an acre for coal lands situated more than fifteen miles from a railroad, and $100 for lands situated within fifteen miles of a railroad, is a mere bagatelle. Some of these coal lands are worth thousands of dollars an acre. If the Government are going to give them away let them do so, and not sell them as coal lands, but sell them as agricultural lands at $1.25 an acre. I merely wish to test the sense of the Senate in reference to selling those lands. I ask for the yeas and nays of the amendment to the amendment.

"Mr. Stewart. I do not object to the yeas and nays being called, but I will make one remark. I think the prices in the bill are already very high, but they are prices recommended by the Department. I have had nothing to do with the preparation of the bill. I take it as I find it. It is reported by the Committee on Public Lands, and I am opposed to the amendment.

"Mr. Corbett. Since the bill was reported I have received some letters in regard to these lands, and the Commissioner of the General Land Office has informed me that he is satisfied the price which has been fixed, although he recommended it, was too high for the Government to get the greatest revenue; that he was satisfied if the price was fixed lower the country could get a greater revenue than by leaving it at ten dollars and twenty dollars.

"Mr. Robertson. The Senator from Nevada says the bill was prepared by the Land Office, and recommended by the Commissioner. I ask the Senator if that recommendation is in writing?

"Mr. Stewart. Yes, sir, it has been read here.

"Mr. Robertson. Then I move that the recommendation be printed.

"The Vice President. That would require unanimous consent. There is an amendment to an amendment pending.

"Mr. Robertson. I shall move at the proper time that all these recommendations from departments be printed. I learn indirectly that a great many recommendations come from the different departments which are not properly supervised by the heads of departments. In fact, they cannot be. Very often words are put in that escape the attention of the heads of departments; and they are brought here and pressed on the Senate as coming from the heads of departments. If this government is to be run by heads of departments, we have no longer any business here in our seats. I wish the country to understand that.

"The Vice President. The Senator from South Carolina has asked for the yeas and nays on the amendment to the amendment.

"The yeas and nays were ordered.

Mr. Pomeroy. I understand this amendment is to put the prices at $100 an acre.

"Mr. Robertson. One hundred dollars or twenty dollars, according to location.

"Mr. Pomeroy. There are some coal deposits in the mountains, very large, that we might well ask $100 an acre for; but take a prairie country where the deposits of coal are very thin, and where it will not pay

to get it out; we have been in the habit of entering them as agricultural lands. Now to charge $100 an acre would be prohibitory; nobody would buy them.

"Mr. Robertson. If they are agricultural lands they are not know as coal lands.

"Mr. Pomeroy. They will be known as coal lands after they are so certified by the surveyor general. The surveyor general does not know the value or thickness of the deposits; he reports them as coal lands because it is found that there are some thin or thick veins of coal, as the case may be. In the mountains where the country has been thrown up endwise the deposits are very thick; we find some veins eight to ten feet in thickness; but in my own state there has never been one found over twenty inches yet that I have known of. These prairie lands generally, where there are thin deposits of coal, have been entered as agricultural lands at $1.25 an acre until a few years past; but the department thought they should be put at a higher price, and recommended twenty dollars where they are near a railroad and ten dollars where they are remote. I thought that was as high as we could think of selling them.

"Mr. Robertson. By the act of July 1, 1864, these lands can be put upon the market and disposed of. I ask the secretary to read that act. It is very short.

"The Chief Clerk read as follows:

"An act for the disposal of coal lands and of town property in the public domain.

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where

any tracts embracing coal beds or coal fields, constituting portions of the public domain, and which, as 'mines,' are excluded from the pre-emption act of 1861, and which, under past legislation are not liable to ordinary private entry, it shall and may be lawful for the President to cause such tracts, in suitable legal subdisivisions, to be offered at public sale to the highest bidder, after public notice of not less than three months, at a minimum price of twenty dollars per acre; and any lands not thus disposed of shall thereafter be liable to private entry at said minimum.

"Mr. Robertson. There is an act by which these lands can be disposed of. Hence I see no necessity for the passage of this bill, which will dispose of the coal lands of the country at a mere nominal price. I merely call the attention of the Senate to it. If they are disposed to give away the public domain of the United States, let them do so and let their names be recorded.

"Mr. Corbett. I simply wish to say that this bill has been prepared, as I understand, to obviate a difficulty. Now, these lands are being entered as farm lands, whereas if they were at a lower price the people would enter them as coal lands. There is no means of knowing when they survey these lands that they are coal lands. There are afterwards discovered in many instances thin veins of coal, and the farmers who own the lands in many instances are afraid they will afterward be declared mineral lands and taken from them; that their patents will be cancelled; but

I think the government have no power to do that. Yet, in order to get a greater revenue, I believe, and the Commissioner believes, that if the price was fixed at a lower rate they would enter them as coal lands, and buy them as such instead of as farming lands.

"Mr. Thurman. I would like to ask the Senator who has this bill in charge a question or two for information. How are these lands called coal lands designated, so that one knows whether he is to apply for coal lands or to apply for agricultural lands?

"Mr. Stewart. There is no way of determining that in all instances. The great body of the lands in the public-land states have been sold for $1.25 an acre, although they were coal lands.

"Mr. Pomeroy. It is the duty of the surveyor general when he surveys to designate the coal lands.

"Mr. Stewart. I was going to remark that it is the duty of the surveyor general, and then they are subject to entry. There have been great quantities through the western states sold at $1.25 as agricultural lands; but what makes it impracticable to execute that law is that the coal is discovered in the deserts where there is no agriculture, and it is manifest absurdity for a man to go there and pretend that he is working a farm, and locate the land for $1.25 an acre. The land officer would say at once, 'That is a fraud.' That is the reason why the department asks the passage of the bill.

"Mr. Thurman. I want to vote right on this matter; but really it does seem to me it is very much in the dark. There is no certainty whether lands are coal lands or not coal lands. The register's books do not show with any satisfaction. How can the register tell, when a man comes to make an entry,

whether the lands are coal lands or not? It seems to me that the true remedy would be to provide some sort of commission or mode of ascertaining what are coal lands, and getting some sort of idea of their value. When that was reported, then we might perhaps pass a general law. I only throw this idea out.

"Mr. Windom. I ask the senator from Nevada whether there is anything to prevent mineral lands being entered under the title of coal lands?

"Mr. Stewart. This only applies to coal lands.

"Mr. Windom. May not mineral lands be entered under the name of coal lands?

"Mr. Stewart. No, they are exempt.

"The Vice-President. The morning hour has expired, and the senate resumes the consideration of the unfinished business, being the resolution in regard to the North Carolina senatorial case, on which the senator from Ohio (Mr. Thurman) is entitled to the floor.

"Mr. Stewart. Let the vote be taken on this bill.

"Mr. Thurman. It cannot be taken now.

"Mr. Stewart. The bill has been up a good many times. I do not think there is anything more to be said about it. I only ask that a vote be taken on this amendment, and then if there is any further amendment or discussion, let it go over.

"Mr. Thurman. I am quite sure the bill will be further discussed.

"Mr. Stewart. I move, then—

"Mr. Thurman. You cannot move now."

Page 3345, May 16.

The amendment to reduce from five to ten dollars an acre is withdrawn. The amendment to make price

at twenty dollars and one hundred dollars falls. The bill was ordered after various amendments, engrossed and put on third reading. Read the third time and passed.

From a perusal of the excerpts thus appended it will be observed that the principal thing which provoked discussion upon the passage of the bill was the price at which the lands were fixed, and amendments were offered to the bill as it then stood and as it finally passed, suggesting different prices for the land, ranging from $2.50 per acre to $100.00 per acre, but after a full discussion and enlightment upon the subject, and after the assurance by the interior department that the price fixed was even higher than it ought to be, all the amendments were withdrawn and the price permitted to stand and become enacted in the law at $10.00 and $20.00 per acre, as now found in the statute. And this has been the construction which the interior department has repeatedly placed upon this statute.

From the regulations of July 21, 1892, in pamphlet form, page 5, section 12 thereof, we find the following:

> "The price per acre is $10.00 where the land is situated *more* than 15 miles from any completed railway, and $20.00 per acre where the land is *within* 15 miles of such road. The price of the land, however, must be determined by its distance from a completed railroad at the date of the payment and entry, irrespective of the preference right of entry."
>
> Also, found in 1st L. D., 689, paragraph 12.

This has repeatedly been the construction of the department as shown by the following cases:

In re Foster et al., 2 L. D., 720-732.
Joseph D. Colton, 10 L. D., 422.

We submit in the light of the authorities bearing upon the question presented, and in view of the elucidation given by the comments of the legislators who passed the act under consideration, that it appears beyond all reasonable doubt that Congress did fix the price, that it has been unchanged, and that no power can change it, except Congress, and it therefore conclusively follows that the appellants here have done all that the law requires them to do and should have received their muniment of title upon the tender of $4,800.00 for the lands herein involved.

We therefore respectfully submit that the action of the local land office in rejecting the said application should be reversed.

Respectfully submitted,

William C. Prentiss
National Metropolitan Bank Building,
Washington, D. C.

Jesse G. Northcutt
Trinidad, Colorado.

Office Supreme Court, U. S.
FILED.
FEB 4 1913
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

WILLIAM G. PLESTED AND CHARLES BEUCHAT, *Appellants*,
vs.
SAMUEL ABBEY AND JOHN J. LAMBERT, *Appellees*.
No. 156.

APPELLANTS' SUPPLEMENTAL BRIEF.

As stated on oral argument, we, to the extent of our ability, investigated the question of jurisdiction before instituting this suit and became thoroughly convinced that the State courts had no jurisdiction of the subject matter, that is, that they are without power to issue process against a Federal officer where, as here, the subject of the suit is inquiry into the legality of acts done by him in the transaction of strictly Federal Government business. Having reached this conclusion we dis-

missed this feature from our minds and were not prepared with authorities when the question was suggested by the court. Through the kind indulgence of the court we now cite the following authorities in corroboration of our declaration of want of power on the part of the State courts:

McClung vs. Silliman, 6 Wheaton, 598,
Slocum vs. Maybery, 2 Wheaton, 1,
In the matter of Jeremiah Ferguson, 9 Johnson Reports, 239.
Hill vs. The Confederate States, 38 Ala. 461.

If we are correct in the assertion that the State courts have no jurisdiction in this case, then certain it is that the Federal court, sitting as such, has exclusive jurisdiction.

Globe Newspaper Company vs. Walker, 210 U. S., 356,
The Ira M. Hedges, 218 U. S., 264.

The Hedges case is also in point if there be any difficulty in distinguishing between matters going to the jurisdiction and those determining the merits. It does not seem to us that that difficulty is presented here, for this court has always recognized that there are proper cases in which the Federal courts will interfere with action attempted to be taken by the heads of executive departments or subordinate executive officers, and the question of jurisdiction does not involve the determination of whether the case presented is such a one as entitles the plaintiffs to relief. The question now is whether or not the court below should inquire into the

merits and say yes, or no, as to our right to relief on the facts presented.

It certainly will be assumed that could we find jurisdiction there we would be only too glad to seek relief in the courts of the State where the impression generally and emphatically prevails that bureaucratic-made law too often supersedes the plain letter of the statute.

Respectfully submitted,

JESSE G. NORTHCUTT,
WILLIAM C. PRENTISS,
Attorneys for Appellants.

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In the Supreme Court of the United States.

OCTOBER TERM, 1912. No. 156.

WILLIAM G. PLESTED AND CHARLES BEUCHAT,
Appellants,

v.

SAMUEL A. ABBEY AND JOHN J. LAMBERT,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR APPELLEES.

This is an appeal from a decree of the Circuit Court of the United States for the District of Colorado. That court sustained a demurrer to the bill of complaint and dismissed the same.

THE PARTIES.

The parties complainant are William G. Plested and Charles Beuchat, persons entitled, under section 2347 of the Revised Statutes, to enter coal lands of the United States.

The parties defendant are Samuel A. Abbey and John L. Lambert, register and receiver, respectively, of the local land office of the United States at Pueblo, Colo.

THE FACTS.

The material facts, as alleged in the bill of complaint, are that on March 23, 1907, complainants took possession of certain lands of the United States, containing 240 acres, in Las Animas County, Colo., and then and there discovered and began the development and improvement of certain coal measures on the lands, and opened a coal mine thereon; that, within 60 days thereafter, complainants filed in the local land office of the United States at Pueblo, Colo., what is known as a coal declaratory statement, under the provisions of section 2349 of the Revised Statutes, claiming the preference right of entry provided by section 2348 of the Revised Statutes; that, thereafter, and on July 1, 1907, complainants tendered to defendants the sum of $20 per acre for said lands, a total of $4,800, and then and there made their application to enter said lands under the provisions of section 2350 of the Revised Statutes; that the declaratory statement and the application of complainants were rejected by defendants for the reason that the lands had been with other lands, by executive order, theretofore reserved and withdrawn from disposition under the coal-land laws; that, from this action of defendants, complainants duly appealed to the Commissioner of the General Land Office, and, on March 30, 1908, the action of defendants was affirmed; from this judgment of the Commissioner of the General Land Office complainants duly appealed to the Secretary of the Interior, and, on January 30, 1909, the action and judgment of the two lower tribunals was affirmed by the Secre-

tary on account of said reservation and withdrawal, which had been made July 26, 1906.

Nothing further was done in the matter until June, 1910, when the lands, with other lands, were, by the Secretary of the Interior and the Commissioner of the General Land Office, duly classified and designated on the books and records of the Land Department as coal lands, and were restored to entry at certain appraised prices. On June 28, 1910, defendants advised complainants of the restoration of the lands and of the classification, prices, etc., thereof, telling complainants that the price was $125 per acre for certain portions thereof, $135 for certain other portions, and $115 for the remainder, amounting in all to $30,000 (R., 4, 9), and that the complainants would be allowed 60 days from the receipt of the letter in which to apply to purchase the lands, in accordance with the coal-land laws and regulations; that thereafter, on July 22, 1910, complainants filed with defendants their written application for the purchase of said lands "in accordance with the provisions of section 2347 of the Revised Statutes of the United States and in accordance with the rules and regulations and upon the forms prescribed by the Interior Department in such cases" (R., 4); that, thereafter, on July 26, 1910, complainants were advised by defendants to give the proper notice of their application, which was done (R., 4).

Complainants having thus been advised on June 28, 1910, of the restoration of the lands and of the prices thereof, and having, thereafter, duly made

their application therefor and proceeded under the regulations to perfect the same, were in a position to complete the purchase of the lands and acquire the title thereto. Instead of doing that, they, thereafter, again wrote the defendants asking them what price would be required for the lands, and, in response thereto, were advised by letters from defendants of September 9 and 12, 1910 (R., 5, 12, 13), that the price would be as stated in prior letter of June 28, 1910, aggregating $30,000, and that they would be allowed 30 days from September 9, 1910, to pay the money, "failing in which your application will be rejected," and notifying them to file, within that time, proof of the continuous posting of the notice on the land, and "if all is regular will pass to final entry upon receipt of the money."

It is then alleged that, on September 22, 1910, complainants applied to defendants to finally enter and purchase the lands for the sum of $20 per acre, a total of $4,800, and tendered to the defendant Lambert the said $4,800, but that he refused to accept the same, and defendants refused to allow said entry except upon the payment of the appraised price, $30,000. (R., 7.) (It will be noted that this was the price at which the lands were offered to them by the letter of June 28, 1910, and pursuant to which they made their application to purchase.)

It is further alleged that defendants declared their intention to reject complainants' application on or before October 13, 1910, unless said price of $30,000 was paid.

Thereupon, and on September 26, 1910, this suit was commenced in the circuit court. The record discloses no further proceedings taken before the defendants or the Land Department, and complainants therefore failed and refused to proceed in the regular manner by obtaining a judgment of defendants and appealing therefrom in the ordinary course to the Commissioner of the General Land Office and the Secretary of the Interior, and thus exhaust their remedies in the Department of the Interior, the proper tribunal and the one exclusively provided by law for the adjudication of such questions.

THE CONTENTION OF COMPLAINANTS.

The contention of complainants is that, under section 2347, Revised Statutes, the maximum price for the lands in question is $20 per acre, and that the Land Department has no right nor power to sell coal lands at a higher price; and, incidentally, that the withdrawal or reservation which defeated their first application was unauthorized and invalid. They pray in their bill of complaint that a writ of injunction issue restraining the defendants from carrying out the orders of the Secretary of the Interior and the Commissioner of the General Land Office requiring defendants to exact the appraised price for the lands, and that the defendants be compelled to accept the application of complainants and allow them to enter and purchase the land upon the payment of the sum of $20 per acre; and that

defendants be restrained from receiving or accepting the application of any other person for the entry of the lands. (R., 8.)

THE CONTENTION OF DEFENDANTS.

It is respectfully submitted that the judgment below should be affirmed, for the following reasons:

(1) That it appears on the face of the bill that the title to the land sought to be acquired is in the United States, and that the proceedings to acquire that title are still *in fieri*, in the only forum, i. e., the Land Department, appointed by law to adjudicate such matters, involving, as they do, the exercise of judgment and discretion; and that the courts are therefore without jurisdiction to interfere, in equity or at law, by review or otherwise, with the exercise of that judgment and discretion.

(2) And that were it otherwise, that is, if the local officers, the defendants in this suit, owe merely a plain ministerial duty which they are neglecting to perform, the remedy is at law, in mandamus, and not in equity.

(3) That it further appears, on the face of the bill, that complainants, if they were wronged by the action of the register and receiver (the defendants), have not exhausted their remedy by resort to the process authorized by law and accorded by the regulation of the Land Department in the disposition of public lands.

(4) And, finally, that the action of the local land officers in requiring the payment of the price fixed

by the Land Department was in accordance with the law.

(5) The question of the validity of the reservation or withdrawal is not in this case. That question was litigated by complainants before the Land Department, decided against them, and abandoned. This suit is based upon a second—an independe application of complainants to enter the land; an application based upon the appraised price.

ARGUMENT ON ABOVE POINTS.

I.

Little need be said by way of argument in support of the proposition on which the court below decided the case against the appellants. (R., 22.) This court has over and over again decided the points upon which that decision rests.

In *Brown* v. *Hitchcock*, 173 U. S. 433, 476–478, the court said:

> Until the legal title to public lands passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department.

In *United States* v. *Shurz*, 102 U. S. 378, 396, it was said:

> Congress has also enacted a system of laws by which rights to these lands may be acquired, and the title of the Government conveyed to the citizen. This Court has, with a strong hand, upheld the doctrine that so long as the legal title to these lands remains in the

> United States, and the proceedings for acquiring it were as yet *in fieri*, the courts would not interfere to control the exercise of the power thus vested in that tribunal. To that doctrine we still adhere.

To the same point are *United States* ex rel. *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316; *Knight* v. *Land Association*, 142 U. S. 161; *Oregon* v. *Hitchcock*, 202 U. S. 60; *Naganab* v. *Hitchcock*, 202 U. S. 473; and the very recent decision in *United States* ex rel. *Ness* v. *Fisher*, 223 U. S. 683.

The defendants are local land officers—the court of first instance in the juridical organization of the Land Department. They are subject to the supervisory authority of the Secretary of the Interior. The latter, within his jurisdiction, fixes the selling price of coal lands. Information of these prices is conveyed to the local land officers, and, under instructions from the Secretary of the Interior, it is their duty in disposing of such lands to exact the prices so fixed. They have no discretion in the matter. If an applicant to purchase coal lands believes that the price fixed by the Secretary is too high, or, on the other hand, believes that the Secretary has no power under the law to fix any price beyond $20 per acre, that is a matter which he should take up with the Secretary himself. And the proper and orderly way provided by the law for him to do it is to appeal to him from a judgment which the local land officers may render in the matter.

The legal title to the land is indisputably in the United States. Complainants are just at the thresh-

old in the process of obtaining title. They are confronted by a decision, an attitude, a demand—whatever one may be pleased to call it—adverse to their contention as to the requirements of the coal-land law, but which, they concede, is taken by the defendants pursuant to the instructions given by superior officers.

In paragraph 16 of the bill (R., 6), it is stated that the rights of the complainants and the action of the defendants involve a construction of section 2347 of the Revised Statutes. Instead of proceeding with the case to the defendants' superior officers by the usual appeal they switch off, so to speak, and invoke a court to interfere—to substitute itself for the head of the Land Department in supervising and controlling the conduct of defendants in a case involving the disposition of a part of the public domain under the public-land laws.

The case is strongly suggestive of *Litchfield* v. *Register and Receiver*, 9 Wall. 575, where, as here, the plaintiff sought to secure the interference of a court with matters confided by law to the jurisdiction of the local officers in the first instance, and then, on appeal, to the higher officers of the Land Department. As the court epitomized it, on page 578:

> He (appellant) says the court below erred because it did not require them (the register and receiver) to come in and answer to his claim of title, and at their expense to put the court in possession of their views, and defend their instructions from the Commis-

> sioner, and convert the contest before the Land Department into one before the court. This is precisely what this court has decided that no court shall do.

That case was cited with approval by this court in *United States* ex rel. *Ness* v. *Fisher, supra,* wherein the court held (syllabus):

> Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with *quasi* judicial functions, to which is confided the execution of the laws regulating the disposal of the public lands.
>
> A decision of an executive officer, made in the discharge of a duty imposed by such a law, and involving the exercise of judgment and discretion, may not be reviewed by mandamus, nor can he be compelled by that means to retract his decision so made and to give effect to another not his own and having his approval.

On the question as to whether the action of the officers of the Land Department in matters of this kind is discretionary or ministerial, complainants, in support of their contention that it is simply ministerial, rely (brief, p. 24) on the case of *Roberts* v. *United States,* 176 U. S. 221, and quote therefrom at length. On this it is sufficient to quote the following language from the opinion of the court in the *Ness* case, *supra:*

> The relator seems to believe that *Roberts* v. *United States,* 176 U. S. 221, * * * in some way qualifies the rule so stated; but this is a mistaken belief.

II.

The only conceivable ground for the intervention of a court is that defendants are neglecting the performance of a clear ministerial duty which, under the law, they owe these complainants.

Complainants contend that they have done all things required of them by law, and have paid all fees and have tendered the sale price required by law (R., 8), and yet the defendants are refusing to permit their purchase of the land unless they pay another sum which they demand but which is unauthorized by law, and that the duty owed is affirmative, positive, in its nature—the duty to accept the sum tendered and to issue such papers as the law and regulations may require.

The remedy in that event is in a court of law, mandamus. The bill fails to show a cause cognizable in equity. Mandamus would afford every remedy to which complainants can claim to be entitled.

It might be observed in passing that complainants' bill emphasizes the debatable nature of the alleged duty. In other words, we certainly have not a situation where a clear, plain, unmistakable duty is perspicuous—the question being whether or not the performance of that duty is neglected or refused. In this case, first of all, it must be decided whether or not the defendants owe any such duty as complainants contend exists, *i. e.*, to obey complainants and accept $4,800 for the land, or to obey the regulations and instructions of their superior officers and require $30,000 for the land.

This brings us to the third proposition upon which we urge affirmance of the judgment below:

III.

That is, if defendants are derelict in the discharge of a duty, there is a forum, constituted by the law, before which that question may be tried—the Land Department. The rules and regulations provide in all instances an appeal by the injured party from the action of the register and receiver to the Commissioner of the General Land Office and ultimately to the Secretary. The bill fails to show that complainants unsuccessfully availed themselves of this right. Rather than exhausting the remedy afforded by law, they fail to show that they ever even invoked it. Not satisfied that the proper officers to supervise the conduct of the defendants in administering the land laws are their superior officers in the Land Department, complainants seek to endow a court with that supervisory power—and immediately solicit its exercise.

We respectfully suggest that this suit is premature—at least.

IV.

On page 17 of complainants' brief, they say:

> If it is lawful for the defendants to demand the sum of $30,000.00 for these lands, then we admit we have no standing in court.

The law is explicit; the language of the act is by no means uncertain; we can not see any room for con-

struction. Section 2347, Revised Statutes, authorized the sale of coal land at "*not less than* $10 per acre" for lands situate beyond a certain distance from a railroad and "*not less than* $20 per acre" for land situate within that distance. Section 2351 authorized the Commissioner of the General Land Office to issue all needful rules and regulations for carrying into effect the provisions of sections 2347, 2348, 2349, 2350, and 2351. Section 2347 was not self-executing. *A* price was not fixed by Congress—merely a *minimum* price was stated below which the Land Department could not go in selling the lands. It remained for the Land Department to fix *the* price—which it did, adopting the lowest price it could within the law. The regulations and decisions cited on pp. 30–31 of complainants' brief were not in *construction* of the coal-land law, but in *administration* of it. The excerpt from the regulations of July 31, 1882, quoted on page 30 of their brief, illustrates the point. The department fixed a price—"the price per acre *is*," etc. That price prevailed for many years until a more businesslike method of classifying lands and fixing prices, graduated by the value of the several tracts, was adopted—adopted, too, according to complainants' own allegations in the bill of complaint, before they ever went on the land in the first place. (R. 6; par. 16, bill.)

Complainants, mistaking this *administration* of the law for a *construction* of it favorable to their contentions, make the further point (brief, p. 31) that this court has held that a construction placed upon a

statute by an executive department is entitled to great weight and will be respected by the courts unless obnoxious to the plain provisions of the statute, and if doubtful will not be overruled except for cogent reasons. We have no quarrel with this doctrine. This case is a good place to apply it. We ask the court to respect the construction and administration of the law as had by the Land Department and approve it.

"Not less than" in ordinary parlance is of unmistakable meaning. There can be no confusion as to its meaning when introduced into legislation. It is employed over and over again in fixing a minimum—a minimum fine, a mimimum wage, etc. There is no such ambiguity as will justify resort to the legislative history of the bill later crystallized into an act or a law to reveal the esoteric intent of the legislators, as where words have been employed susceptible of varied meanings.

Complainants refer to portions of the debates in Congress as determinative of the proper construction to be placed upon these words. But, as stated above, they need no *construction*. They speak for themselves. If the provisions of a statute are plain and unambiguous, the courts must accept them as they are declared; otherwise, they would usurp the functions of the legislative department of the Government. But, even were there some ambiguity here—

> there is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to

discover the meaning of a statute passed by that body. *United States* v. *Freight Association*, 166 U. S. 290, 318; *Binns* v. *United States*, 194 U. S. 486, 495.

What individual senators or representatives may have urged in debate, in regard to the meaning to be given to a proposed constitutional amendment, or bill or resolution, does not furnish a firm ground for its proper construction, nor is it important as explanatory of the grounds upon which the members voted in adopting it. *Maxwell* v. *Dow*, 176 U. S. 581, 601.

In respect to coal-land legislation, the two acts of July 1, 1864 (13 Stat. 343), and of March 3, 1865 (*id.*, 529), both fixed minimum prices, the first act contemplating bids with sale to the highest bidder, the lowest bid authorized to be considered being $20. The excerpts in complainants' brief (pp. 36, *et seq.*) indicate the diversity of ideas as to the value of such lands, some even intimating that $100 was the proper minimum for some tracts. If the legislative history of Revised Statutes, section 2347, shows anything at all, it is in emphasis of the proposition that the Secretary of the Interior must not dispose of the land at prices less than those named in the act, leaving the maximum to be governed by the ordinary rule of business. If this be not so, the words "not less than" are absolutely meaningless. If appellants' contention possesses aught of merit, Congress might easily have said that a properly qualified person should have the right to enter "upon payment to the receiver" of "ten dollars," etc. And this was pre-

cisely what Congress did in the act of April 28, 1904 (33 Stat. 525), in providing for the disposal of coal lands in Alaska, after having attempted (act of June 6, 1900, 31 Stat. 658) to extend the provisions of sections 2347 to 2352, Revised Statutes, to that Territory.

Complainants singularly fall into error in speaking of *construction* placed upon the words in question, not only by the Land Department, but by this court in the case of *United States* v. *Trinidad Coal and Coking Co.*, 137 U. S. 160, cited on pp. 27–29 of complainants' brief. The court merely recited and applied facts. There were then, as now, "fixed" prices; but nowhere did the court settle the question—it was not raised—as to who fixed those prices. Congress, it is true, had fixed a minimum; but *the* price—the price that was the minimum and the maximum, and in short the only price—was that which was fixed by the Secretary of the Interior by circulars and regulations governing the administration of the coal-land laws.

How may "not *less* than" be stretched or distorted into meaning "not *more* than"?

Although these words "not less than" have been so often used in statutes of various kinds, there is a peculiar lack of authority on their construction. As was said by the court, in 1883, in *Hankins* v. *The People*, 106 Ill. 628, 634, speaking of these words:

> On this question of construction of the section under consideration we receive but little aid from adjudged cases.

The court there (p. 632), referring to cases where it had affirmed judgments for fines more than the amount named in the statute, said:

> It is true in neither of those cases was the question under consideration presented or discussed, but they are referred to as showing this question is not so obvious as to have attracted the attention of counsel arguing those cases.

We have industriously examined the books, and the following are the only cases which we can find upon the subject, and they all, with one exception, sustain our view:

> Shall be fined not less than $100.
>
> It fixed the minimum, but fixed no maximum. Had there been an intention to fix that sum as the limit, both as a minimum and a maximum, it appears almost incredible that no language was employed to manifest the intention * * *: *Hankins* v. *The People, supra.*

"Must not be less than 16 feet wide": *Rusch* v. *The City of Davenport*, 6 Iowa, 443, 454.

"Not less than three days": *Stewart* v. *Griswold*, 134 Mass. 391.

"Equal to" includes superior to and means "not less than": *Stewart* v. *Lehigh Valley R. R. Co.*, 38 N. J. Law, 505, 517.

"Not less than $100": *Worth* v. *Peck*, 7 Pa. St. 268.

"Not less than two weekly newspapers," "for not less than four weeks": *Commonwealth* v. *Brown*, 210 Pa. St. 29, 34, 59 Atl. 479.

"Not less than five years": *Drake* v. *The State*, 5 Tex. App. 649.

In each of the above cases the court comes to its conclusion after carefully reasoning out the question. The only case seeming to hold to the contrary is that of *Stimson* v. *Pond*, 23 Fed. Cas. No. 13455. It is, however, as seen above, contrary to the weight of authority, and the reasoning therein, we submit, is not sound. The court there was dealing with a penalty, under an act of Congress, "of not less than $100," and laid great stress upon that fact. An examination of the opinion will, we think, satisfy the court that the conclusion there was erroneous. However, considering the facts of that case, and the basis of the court's reasoning, it would seem that it need not be necessarily considered as authority against our contention here. The case was referred to and considered by the court in *Hankins* v. *The People*, *supra*, wherein they stated their inability to agree with that conclusion.

Query: If the statute read "not more than $20," would complainants then contend that it meant "$20," and "not less than" $20? What a singular way to express precisely $20.

V.

The question of the validity of the reservation or withdrawal is not in this case. This suit is based upon the second—an independent—application of complainants to enter the lands.

When they made their first application it was rejected on account of the reservation or withdrawal, and they regularly proceeded in the proper forum by appealing to the Commissioner of the General Land Office and the Secretary of the Interior; and the judgment of the defendants was affirmed. Thereupon, their first application became absolutely rejected—ended and lifeless for any purpose. This final rejection was January 30, 1909. Complainants, if they had a remedy in the courts, had one then, which it was their duty to pursue, and the proper party defendant was the Secretary of the Interior, or, maybe, the President, but not the local land officers. They took no proceedings, however, but acquiesced in this judgment of the Secretary for a year and a half, when, after the Secretary had classified the lands, and they had been restored to entry, and complainants had been notified thereof and of the price fixed, they, without objection of any kind, applied to purchase the lands and conformed to the regulations and procedure of the Land Department in all respects, and not until they came to make their payment and receive their receipt did they object to the price placed on the land. *Yet, they had applied to enter under the price fixed.*

It will thus be seen that their suit is based solely upon their second application, which was the only one then before the Land Department. The question of the withdrawal has, by their own acquiescence and conduct, passed out of the case, and the only point finally made by them on their second application be-

fore the defendants was that the maximum price of the lands under the law was $20 per acre, and that the Land Department had no right to classify coal lands at any higher price.

Moreover, the defendants were not responsible for the withdrawal. In any suit involving that question the Secretary of the Interior is a necessary party, if he made the withdrawal, and may be the President, if he made it.

The question of the validity of the withdrawal was fully presented and urged by complainants in the Land Department under their first application, and decided against them. They thus exhausted their remedy unless they desired to transfer the question to a court, which they declined to do, but, on the contrary, acquiesced therein and, thereafter, based their whole application to purchase the land upon a condition and situation which arose by virtue of the very revocation of the withdrawal and the restoration of the lands to entry at a fixed price. Their whole case is thus based upon lands not withdrawn or reserved, but lands open to entry and purchase under the coal-land laws, and upon an application to purchase them at the price fixed by the Commissioner of the General Land Office and the Secretary of the Interior. It is important to note that, unlike their first application, this application was not made pursuant to a declaratory statement and the preference right provided in sections 2348 and 2349, Revised Statutes, but was an ordinary application to purchase under section 2347,

Revised Statutes (R., 4, Exhibits B, C, and D, pp. 10, 11); thus showing a clear abandonment of any claim to the land under their first proceeding, which wholly eliminates any question as to the withdrawal.

CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court should be affirmed.

WM. MARSHALL BULLITT,
Solicitor General.

CHARLES W. COBB,
Assistant Attorney General.

JANUARY 23, 1913.

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PLESTED *v.* ABBEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

No. 156. Argued January 31, 1913.—Decided April 7, 1913.

Subordinate officers of the Land Department are under the control, and their acts are subject to the review, of their official superiors—the Commissioner of the General Land Office and ultimately the Secretary of the Interior.

Until the legal title to public land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department. *Brown* v. *Hitchcock*, 173 U. S. 433, 476.

Congress has placed the Land Department under the supervision and control of the Secretary of the Interior, a special tribunal with

large administrative and *quasi*-judicial functions, and subordinate officials should not be called upon to put the court in possession of their views and defend their instructions from the Commissioner and convert the contest before the Land Department into one before the court. *Litchfield* v. *Register*, 9 Wall. 575.

THE facts, which involve the right under the laws of the United States to purchase coal lands belonging to the United States, and the jurisdiction of the courts over the officers of the Land Department prior to issuing of the patent, are stated in the opinion.

Mr. Jesse G. Northcutt and *Mr. William C. Prentiss*, with whom *Mr. Robert H. Widdicombe* and *Mr. A. Watson McHendrie* were on the brief, for appellants:

The rights of the appellants, as well as the duty of the appellees, are to be found in § 2347, Rev. Stat., fixing twenty dollars per acre.

That statute is not ambiguous. Its language admits of but one interpretation. If the receiver or register, or both, demand more than twenty dollars they are prohibiting the exercise of the right which Congress has conferred and therefore acting beyond and contrary to the law. Being outside of the pale of the law they are not entitled to its protection, even though the rule exists that they shall not be interfered with by the courts when exercising their official functions within the law.

The rule that so long as the title of the land remains in the Government the officers of the Land Department will not be interfered with in the discharge of their official duties, unless those duties are of a character purely ministerial and involving no exercise of judgment or discretion (*Litchfield* v. *Richards*, 9 Wall. 575) has as the converse of this proposition that if the duty involved is purely ministerial, not involving the exercise of discretion, the courts on proper application will interfere for the protection of individual rights.

The courts have interfered to prevent the infliction of injury by other Federal executive officers. Why the sacred immunity of officers of the Land Department?

The question herein involved calls for no distinction between discretionary and ministerial duties. Appellants do not seek to restrain the discharge of a duty, or to enforce the discharge of a duty, but simply to restrain the defendants from doing an unlawful and wrongful thing, which if permitted to be done inflicts a wrong and injury upon the complainants here, for which they have no plain or adequate remedy, if, in fact, they have any remedy at all, except the interference of a court of equity by its preventive mandate.

The question is not whether the act is discretionary or ministerial, but whether it is lawful or unlawful. Courts of equity will restrain the officers from exercising their duties beyond the pale of the law just as they do private individuals. 2 Story's Equity, § 955 (12th ed.); 3 Pomeroy, § 4340 (3d ed.); *Noble* v. *Union R. L. & R. Co.*, 147 U. S. 165; *Board of Liquidation &c.* v. *McComb*, 92 U. S. 531, 541; *LaChapalle* v. *Buffs Indian Agt.*, 69 Fed. Rep. 481; *American School* v. *McAnnulty*, 187 U. S. 94; *New Orleans Natl. Bank* v. *Merchant*, 18 Fed. Rep. 851; *Teal* v. *Felton*, 12 How. 284; *Rector* v. *Gibbon*, 111 U. S. 276.

If the order of the Department under which the defendants here claim to act is not clearly within the power granted to the Interior Department, it is not law and has no binding force or effect. *United States* v. *United Verde Copper Co.*, 196 U. S. 207; *Ballinger* v. *Frost*, 216 U. S. 240.

As to whether the act is discretionary or ministerial, see *Roberts* v. *United States*, 176 U. S. 221.

The Department can exercise only such power in making regulations as is conferred upon it by statute. § 161, Rev. Stat.

As to specific authority to make regulations concern-

ing coal lands, see §§ 2347, 2351, Rev. Stat. Even if Congress in enacting § 2347, fixing the price at not less than $20.00 per acre, intended to reserve the right to charge more, it has nowhere vested in the Interior or any other executive department the power to fix a greater or any other price. Such power could not be exercised without an express delegation thereof. And see as to intent of Congress in this respect, *United States* v. *The Trinidad Coal & Coke Co.*, 137 U. S. 160, construing the acts of July 1, 1864, and March 3, 1873. See also departmental regulation of July 31, 1882, and 1 L. D. 689, par. 12, fixing the price at $10–$20, depending upon distance from railways.

This has been universally the construction of the Department as shown by the following cases: *In re Foster*, 2 L. D. 730–733; *Re. Colton*, 10 L. D. 422; *Re Conant*, 29 L. D. 637; *Secretary's Instructions*, 1 L. D. 540; *Re Largent*, 13 L. D. 396; *Re Burgess*, 24 L. D. 11.

The construction placed upon a statute by an executive department and followed for a term of years is entitled to great weight, as repeatedly held by this court. *United States* v. *Finnell*, 185 U. S. 236.

The construction thus placed upon the statute will be respected by the courts unless obnoxious to the plain provisions of the statute, and if doubtful will not be overruled except for cogent reason. *Edwards* v. *Darby*, 12 Wh. 206; *United States* v. *Fillbrick*, 120 U. S. 52; *United States* v. *Alabama G. S. R.*, 142 U. S. 615.

The Executive had no right to withdraw these lands from entry. *United States* v. *Fitzgerald*, 15 Pet. 421; *United States* v. *Tichenor*, 12 Fed. Rep. 423.

Where parties have lawfully tendered their money to the Department and the tender is wrongfully rejected, the rights of the applicants are the same as though the money had been accepted. *Ballinger* v. *Frost, supra.*

The withdrawal under the authorities above cited

was inoperative to reserve the lands from entry. *Osborne* v. *Froyseth*, 216 U. S. 571.

None of the constitutional powers vested in the President include a delegation to him of control over the public lands. If, then, he has any power over the public lands, it must be found in the acts of Congress. *Northern Pac. R. R. Co.* v. *Davis*, 19 L. D. 87; *Titamore* v. *So. Pac. R. Co.*, 19 L. D. 249; Instructions, 33 L. D. 104; *Fort Boise Hay Reservation*, 6 L. D. 16; *United States* v. *Blendaner*, 122 Fed. Rep. 703; *Hewitt* v. *Schultez*, 180 U. S. 139; *So. Pac.* v. *Bell*, 183 U. S. 675.

The state courts had no jurisdiction of the subject-matter; they are without power to issue process against a Federal officer where, as here, the subject of the suit is inquiry into the legality of acts done by him in the transaction of strictly Federal Government business. *McClung* v. *Silliman*, 6 Wheat. 598; *Slocum* v. *Maybery*, 2 Wheat. 1; *Re Ferguson*, 9 Johns. 239; *Hill* v. *Confederate States*, 38 Alabama, 461.

As the state courts have no jurisdiction in this case, the Federal court, sitting as such, has exclusive jurisdiction. *Globe Newspaper Co.* v. *Walker*, 210 U. S. 356; *The Ira M. Hedges*, 218 U. S. 264.

Mr. Assistant Attorney General Cobb, with whom *Mr. Solicitor General Bullitt* was on the brief, for appellees:

It appears on the face of the bill that the title to the land sought to be acquired is in the United States, and that the proceedings to acquire that title are still *in fieri*, in the only forum, i. e., the Land Department, appointed by law to adjudicate such matters, involving, as they do, the exercise of judgment and discretion; and that the courts are, therefore, without jurisdiction to interfere in equity or at law, by review or otherwise, with the exercise of that judgment and discretion. *Brown* v. *Hitchcock*, 173 U. S. 433, 476, 478; *Knight* v. *Land Association*, 142

U. S. 161; *Litchfield* v. *Register and Receiver*, 9 Wall. 575; *Naganab* v. *Hitchcock*, 202 U. S. 473; *Oregon* v. *Hitchcock*, 202 U. S. 60; *Roberts* v. *United States*, 176 U. S. 221; *Ness* v. *Fisher*, 223 U. S. 683; *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316; *United States* v. *Schurz*, 102 U. S. 373, 396.

Were it otherwise, that is, if the local officers, the defendants in this suit, owe merely a plain ministerial duty which they are neglecting to perform, the remedy is at law, in mandamus and not in equity.

It further appears, on the face of the bill, that complainants, if they were wronged by the action of the register and receiver (the defendants), have not exhausted their remedy by resort to the process authorized by law and accorded by the regulations of the Land Department.

The action of the local land officers in requiring the payment of the price fixed by the Land Department was in accordance with the law. *Binns* v. *United States*, 194 U. S. 486, 495; *Commonwealth* v. *Brown*, 210 Pa. St. 29; *Drake* v. *The State*, 5 Tex. App. 649; *Hankins* v. *The People*, 106 Illinois, 628, 634; *Maxwell* v. *Dow*, 176 U. S. 581, 601; *Rusch* v. *The City of Davenport*, 6 Iowa, 443, 454; *Stewart* v. *Griswold*, 134 Massachusetts, 391; *Stewart* v. *Lehigh Valley R. R. Co.*, 38 N. J. Law, 505, 517; *Stimson* v. *Pond*, 23 Fed. Cas. No. 13455; *United States* v. *Freight Association*, 166 U. S. 290; *United States* v. *Trinidad Coal and Coking Co.*, 137 U. S. 160; *Worth* v. *Peck*, 7 Pa. St. 268.

The question of the validity of the reservation or withdrawal is not in this case. That question was litigated by complainants before the Land Department, decided against them, and abandoned. This suit is based upon a second—an independent—application of complainants to enter the land based upon the appraised price.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The appellants prosecute this direct appeal from a decree

sustaining a demurrer to a bill by them filed and dismissing the cause for want of jurisdiction. The suit concerned the right of the complainants under the laws of the United States to purchase certain coal lands belonging to the United States, and the defendants were the local land officers of the United States at Pueblo, Colorado.

The theory that the decree dismissing the bill is susceptible of being directly reviewed rests upon the assumption that the controversy, because of its nature and because of the official character of the defendants, was one of exclusive Federal cognizance, and therefore the refusal to exercise jurisdiction necessarily involved a ruling concerning the authority of the court below as a Federal court.

To decide the issue it is essential to consider the averments of the bill and the reasons which led the court below to sustain the demurrer. The bill alleged that in the spring of 1897 the complainants took possession of and commenced the improvement of two hundred and forty acres of coal land, the property of the United States, situated within fifteen miles of a completed railroad, in Las Animas County, Colorado. In due time, it was averred, they filed in the local land office at Pueblo the declaratory statement authorized by § 2349, Revised Statutes, and on July 1, 1907, tendered twenty dollars per acre for the land and applied to enter the same under § 2350, Revised Statutes. It was alleged that on January 11, 1908, both the declaratory statement and the application were rejected by the local land office upon the ground that the land had been withdrawn from sale under the coal land laws by a departmental order dated July 26, 1906, and that on appeal the Commissioner of the General Land Office affirmed the action of the local officials, and on a further appeal such decision was approved on January 30, 1909, by the Secretary of the Interior.

The following facts were then averred:

In June, 1910, the land in question, with other land, was restored to entry, and on June 28, 1910, the register notified the complainants in writing that they would be allowed sixty days from the receipt of the communication in which to make a formal claim to the land as to which they had previously filed a notice of claim, and that the price fixed by the United States Geological Survey for certain of the land was one hundred and twenty-five dollars per acre and for the remainder one hundred and fifteen dollars per acre, aggregating thirty thousand dollars for the entire tract. It was alleged that soon afterwards the complainants filed in the local land office a written application for the purchase of the land and by direction of the register a notice of the application was published and copies thereof were posted as required by statute, and due proof of the performance of such acts was filed in the land office. In September following, in response to communications from the complainants, the local land office notified complainants that payment for the land must be made within thirty days or the application to purchase would be rejected. Within the time fixed a tender of forty-eight hundred dollars was made to the receiver, as being the price fixed by § 2347, Revised Statutes. The receiver refused to accept the money or to give any receipt therefor. The bill then averred that it was the intention of the land officers to refuse to permit the complainants to purchase the land unless they were willing to pay, not the alleged statutory price, but the sum of thirty thousand dollars, arbitrarily fixed by the Secretary of the Interior as the price of the lands. The prayer of the bill was for both a restraining and a mandatory injunction, the one forbidding the defendant land officers from carrying out the orders of the Secretary of the Interior and the Commissioner of the General Land Office and the other commanding the defendant land officers to accept the application of the complainants and allow them

to purchase the lands upon the payment of the sum of $20 per acre. It was, moreover, prayed that defendants be restrained from receiving or accepting the application of any other person for the entry of the lands.

As at the outset stated, a demurrer was sustained and the cause was dismissed for want of jurisdiction, the court in its certificate stating that this was done "upon the ground that a ruling or decision by the officers of a local land office of the United States made in the usual course of proceedings for the acquisition of the title to public lands is not subject to review or correction in the courts while the title to the lands remains in the United States, and also upon the further ground that while the title to public lands remains in the United States and the proceedings for acquiring that title are still *in fieri*, the courts are without power, by injunction or otherwise, to control the judgment and discretion of the officers of the land department in respect of the disposal of such lands under the public land laws."

In testing the correctness of the ruling we treat as negligible the averments of the bill assailing the validity of the rejection on January 30, 1909, of the application then pending to enter the land. We do this because if complainants had a remedy in the courts growing out of such rejection it was their duty to invoke and pursue that remedy, and not having done so, but on the contrary having for more than a year and a half acquiesced in the judgment of the Land Department and having made subsequently an entirely new application, we think their rights must be measured by the later application. Considering the issue in that respect, we are of opinion that the principle which caused the Circuit Court to hold that it had no jurisdiction to award the relief prayed and hence to dismiss the bill was a correct one. The United States had not parted with the legal title to the land. The defendants were subordinate officials of the Land

Department, and the acts and omissions complained of were done pursuant to instructions from the head of the Land Department, vested by law with the power to control the conduct of his subordinates in matters of this character.

As officers administering the land laws, the defendants therefore were, in the nature of things, under the control and their acts were subject to the review of their official superiors—the Commissioner of the General Land Office and ultimately of the Secretary of the Interior. As said in *Litchfield* v. *Register & Receiver*, 9 Wall. 575, 578, subordinate officials of the Land Department should not be called upon "to put the court in possession of their views and defend their instructions from the Commissioner and convert the contest before the Land Department into one before the court." Indeed the doctrine upon which the court below based its action has been frequently announced and enforced. It was thus epitomized in *Brown* v. *Hitchcock*, 173 U. S. 473, 476, that "until the legal title to public land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department." In *United States* v. *Schurtz*, 102 U. S. 378, 396, the doctrine is thus stated:

"Congress has also enacted a system of laws by which rights to these lands may be acquired, and the title of the Government conveyed to the citizen. This Court has with a strong hand upheld the doctrine that so long as the legal title to these lands remained in the United States, and the proceedings for acquiring it were as yet *in fieri*, the courts would not interfere to control the exercise of the power thus vested in that tribunal. To that doctrine we still adhere."

See also *United States ex rel. Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316; *Knight* v. *Land Association*, 142 U. S. 161; *Oregon* v. *Hitchcock*, 202 U. S. 60; *Naganab* v. *Hitchcock*, 202 U. S. 473; and the very recent decision in *United*

States ex rel. Ness v. *Fisher*, 223 U. S. 683. In the last named decision the *Litchfield Case* was cited with approval, and it was again reiterated that Congress has placed the Land Department under the supervision and control of the Secretary of the Interior, a special tribunal with large administrative and *quasi*-judicial functions, to be exerted for the purpose of the execution of the laws regulating the disposal of the public lands.

Without, therefore, expressing any opinion upon the merits, we hold that under the facts stated in the bill this resort to the courts was premature, and the judgment below must therefore be

Affirmed.